TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 148.

THE CITY OF LOS ANGELES, HERMAN SILVER, Z. D. MATTHUSS, ET AL., APPELLANTS,

vs.

LOS ANGELES CITY WATER COMPANY, CRYSTAL SPRINGS LAND AND WATER COMPANY, AND S. O. MURPHY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

FILED OCTOBER 10, 1899.

(17,014.)

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a In the Supreme Court of the United States.

LOS ANGELES CITY WATER COMPANY, CRYSTAL SPRINGS LAND and Water Company, and S. G. Murphy, Complainants and Respondents,

vs.

THE CITY OF LOS ANGELES, HERMAN SILVER, Z. D. MATTHUSS, L. M. Grider, E. L. Blanchard, C. H. Toll, James Ashman, E. L. Hutchinson, F. M. Nickell, and F. L. Baker, Composing the Council of the City of Los Angeles, Defendants and Appellants.

UNITED STATES OF AMERICA, *ss:*

To Los Angeles City Water Company, Crystal Springs Land and Water Company, and S. G. Murphy, Greeting:

Whereas the City of Los Angeles, Herman Silver, Z. D. Matthuss, L. M. Grider, E. L. Blanchard, C. H. Toll, James Ashman, E. L. Hutchinson, F. M. Nickell, and F. L. Baker, composing the council of the city of Los Angeles, have lately appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the southern district of California, made in favor of you, the said Los Angeles City Water Company, Crystal Springs Land and Water Company, and S. G. Murphy, and have filed the security required by law, you are therefore hereby cited to appear before the said Supreme Court, at the city of Washington, on the 10th day of October next, to do and receive
b what may appertain to justice to be done in the premises.

Given under my hand, at the city of Los Angeles, in the ninth circuit, this 7th day of October, in the year of our Lord one thousand eight hundred and ninety-eight.

OLIN WELLBORN, *Judge.*

Service of foregoing citation on appeal is hereby accepted on behalf of complainants and respondents this 7th day of September, 1898.

WHITE & MONROE,
J. S. CHAPMAN,
Solicitors for Respondents.

c [Endorsed:] No. 734. R. Org. Supreme Court of the U. S. Los Angeles City W. Co. *et al.*, respondents, *vs.* City of Los Angeles *et al.*, appellants. Citation. Filed Sep. 7, 1898. Wm. M. Van Dyke, clerk; —— ——, deputy. W. E. Dunn, A. Crutcher; Lee & Scott, rooms 411–414 Bullard block, Los Angeles, California, solicitors for appellants.

1 In the Circuit Court of the United States of America of the Ninth Judicial Circuit in and for the Southern District of California.

LOS ANGELES CITY WATER COMPANY, CRYSTAL SPRINGS Land & Water Company, and S. G. Murphy, Complainants,
vs.
THE CITY OF LOS ANGELES, HERMAN SILVER, Z. D. Matthuss, L. M. Grider, E. L. Blanchard, C. H. Toll, James Ashman, E. L. Hutchison, F. M. Nickell, and F. L. Baker, Composing the Council of the City of Los Angeles, Defendants. } No. 734.

2 In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

LOS ANGELES CITY WATER COMPANY, CRYSTAL SPRINGS LAND & Water Company, and S. G. Murphy, Complainants,
vs.
THE CITY OF LOS ANGELES, HERMANN SILVER, Z. D. MATTHUS, L. M. Grider, E. L. Blanchard, C. H. Toll, James Ashman, E. L. Hutchison, F. M. Nickell, and F. L. Baker, Composing the Council of the City of Los Angeles, Defendants.

The Los Angeles City Water Company, a corporation organized under and in pursuance of the laws of the State of California and having its principal place of business in the city of Los Angeles, county of Los Angeles, in said State, and the Crystal Springs Land and Water Company, a corporation organized under and in pursuance of the laws of the said States of California and having its principal place of business in the city of Los Angeles, and S. G. Murphy, a resident and citizen of San Francisco, in the State of California, bring this their bill of complaint against the said City of Los Angeles, a municipal corporation organized under the laws of the State of California, and Hermann Silver, Z. D. Matthuss, L. M. Grider, E. L. Blanchard, C. H. Toll, James Ashman, E. L. Hutchison, F. M. Nickell, and F. L. Baker, composing the council of the city of Los Angeles; and thereupon your orators complain and say:

I.

3 That the Los Angeles City Water Company is and for more than twenty years has been a corporation duly organized under the laws of the State of California and having its principal place of business in the city of Los Angeles.

II.

That the Crystal Springs Land and Water Company is and for ten years last past has been a corporation duly organized under the laws of the State of California and having its principal place of business in said city of Los Angeles.

III.

That the City of Los Angeles is and during all the times herein mentioned has been a municipal corporation duly organized under the laws of the State of California, and the said other defendants compose the council of the city of Los Angeles, and the said council of the city of Los Angeles is the governing body thereof.

IV.

That on or about the 22nd day of July, 1868, the said City of Los Angeles entered into a contract with J. S. Griffin, P. Beaudry, and Solomon Lazard with respect to furnishing water to the inhabitants of the city of Los Angeles by the said parties, and which said contract bears date the 20th day of July, 1868, and is in the words and figures following, to wit:

"This agreement made and entered into this the 20th day of July, A. D. 1868, between the corporation known as the mayor and common council of the city of Los Angeles, and their successors in office, for and on behalf of said city of Los Angeles, party of the first part, and John S. Griffin, Prudent Beaudry and Solomon Lazard, residents of the city and county of Los Angeles, State of California, party of the second part witnesseth; that for and in consideration of the yearly payment of one thousand five hundred dollars per annum in gold coin, such payments to be made upon the first day of January of each year, after the signing and approval of this ordinance
4 and contract, until the conclusion of the term of this contract; and the further consideration that the said parties of the second part will surrender to the said party of the first part and cancel all claims they now hold against the said city for repairs of said water works, and for damages amounting to the sum of eight thousand dollars, a little more or less; and for the further consideration *of* the said parties of the second part, shall make the following improvements about, in and upon the said water works at their own proper cost and expenses, to wit: Lay down in streets of said city, twelve miles of iron pipes of sufficient capacity to supply the inhabitants of said city with water for domestic purposes, and shall erect, or cause to be erected one hydrant to be used as a protection against fire, at one corner of each cross-street of said city, where the water pipes now are, or may hereafter be laid by virtue of this contract, and shall, within one year from the approval of this contract and ordinance, erect or cause to be erected, an ornamental fountain upon the public plaza of said city, of such design as the mayor and common council shall direct, at a cost not to exceed one thousand dollars; and shall within two years from the approval of this contract and ordinance construct, at their own expense, such ditches, flumes, or erect such machinery in connection with said water works, as will secure to the inhabitants of said city, a constant supply of water for domestic purposes, and shall construct reservoirs of sufficient capacity for that purpose. The said party of the first part, for the above considerations, and one dollars in hand paid, the receipt whereof is hereby acknowledged, hereby covenants and agrees

with the said party of the second part, their heirs, executors, administrators, or assigns, to deliver and concede to the said parties of the second part, their heirs, executors, administrators or assigns, the exclusive use, control, possession and management of the Los
5 Angeles city water works, so called; together with all and singular, the pipes, flumes, wheels and other personal property composing and appertaining to said water works, in any manner whatsoever, with all the rights, easements and privileges, and covenants as described and contained in a certain instrument of lease, executed by the mayor and common council of the said city of Los Angeles, of date October sixteen, A. D., one thousand eight hundred and sixty-five to Jean L. Sansevaine, for the period of thirty years from the signing and approval of this contract and ordinance, with the right to sell and distribute water for domestic purposes, and to receive the rents and profits thereof for their own use and benefit, except as hereinbefore provided, hereby giving and granting the said parties of the second part, their heirs, executors, administrators, or assigns, the right to lay pipes in any and all the streets of said city and to dig and make all necessary excavations for that purpose, and the right of way through, upon, and over lands or streets belonging to the said city of Los Angeles, with the additional right to take water from the Los Angeles river at a point above or near the present dam; provided, always, that the said parties of the second part, their heirs, executors, administrators, or assigns, shall at no time take from said river for the use of said water works, more than ten inches of water, without the previous consent of the mayor and common council of said city; and that they will, within sixty days from the date hereof, select the point from which the water will be taken from said river. The said party of the first part hereby covenant- and agree- with the said parties of the second part, their heirs, executors, administrators or assigns, that, at the expiration of the period of thirty years from the execution of this instrument, *they* will pay to the said parties of the second part, their heirs, executors, administrators or assigns, the value of the improvements made in, about and upon the said water works, in
6 pursuance of this contract, the same to be ascertained by arbitration, in case the parties cannot agree upon the value thereof, the said party of the first part and the parties of the second part, their heirs, executors, administrators or assigns, to choose one man each, and the two men thus chosen to select a third man, and the judgment of the three men thus selected shall be final in the premises. And the said party of the first part hereby covenant- and agree- to make no other lease, sale, contract, grant or franchise to any person or persons, corporation or company for the sale or delivery of water to the inhabitants of said city for domestic purposes during the continuance of this contract, always without prejudice to any rights already granted. And the said parties of the second part, their heirs, executors, administrators or assigns, hereby covenant and agree with the said party of the first part, that they will pay the sums of money at the time and in the manner hereinbefore mentioned and set forth, and cancel the claims hereinbefore

mentioned, upon the signing and approval of this contract and ordinance by the proper parties thereto; that they will make the improvements hereinbefore mentioned and set forth, in the following manner, to wit: That they will replace all the wooden pipes now belonging to said water works within one year from the signing and approving of this contract and ordinance, and that they will extend said iron pipes as fast as the citizens, desiring to be supplied with water for domestic purposes, will agree to take sufficient water to pay ten per cent. per annum interest upon the cost of extending such pipes through the streets now unsupplied with water. That they will, within one year from the date, place a hydrant to be used as a protection against fire at one corner of one street at each of the cross-streets where the pipes are now laid down, and will erect hydrants at other street corners, according to the terms of this contract, as fast as the pipes are extended through
7 the streets of the said city. That they will erect, or cause to be erected, an ornamental fountain upon the public plaza, of such designs as the mayor and common council shall direct, within one year from the date hereof; that they will furnish water for the public schools, city hospitals and jails, free of charge, when the same are near the pipe, the city furnishing the necessary conduits for that purpose; that they will make all the improvements herein mentioned and set forth, and keep the same in repair at their own cost and expense, for the said period of thirty years, and return the said water works to the said party of the first part at the expiration of the said period of thirty years, in good order and condition, reasonable wear and the damage of the elements excepted, upon the payment to them of the value of the improvements made after the approval of this contract, to be ascertained as hereinbefore provided, and give a bond in the sum of twenty thousand dollars, conditioned for the compliance by them of the conditions of this contract, to be approved by the mayor of said city; and will pay all State and county taxes assessed upon said water works during the said period of thirty years. Always provided that the mayor and common council of said city shall have, and do reserve, the right to regulate the water rates charged by said parties of the second part or their assigns, provided that they shall not so reduce such water rates or so fix the price thereof to be less than those now charged by the parties of the second part for water; provided, that a certain contract of lease heretofore executed by the mayor and common council of said city to Jean L. Sansevaine, of said water works, of date October sixteenth, A. D., one thousand eight hundred and sixty-five, be surrendered and cancelled up at or before the signing of this contract; provided, always, that the rights and privileges by these presents conceded to said parties of the second part, do not
8 embrace, to any extent, of have any reference to the water works of said city used for the distribution of water for the purposes of irrigation, or affect in any manner any rights of irrigation, either existing at present, or which may exist hereafter, except as to the ten inches of water, as hereinbefore provided. And it is expressly stipulated and covenanted that said parties of the second

part shall not dispose of any water for the purposes of irrigation, but shall only take from said river the water necessary for domestic purposes, as above specified.

"In testimony thereof the said parties have hereunto set their hands and seals the day and year first above written.

"JOHN KING, *President.*

"Approved this 22d day of July, A. D. 1868.

"C. AGUILAR, *Mayor.*
"JOHN S. GRIFFIN. [SEAL.]
"P. BEAUDRY. [SEAL.]
"S. LAZARD. [SEAL.]"

V.

Your orators further allege that the said contract of lease executed by the mayor and common council of said city to Jean L. Sansevaine of the water works therein referred to and of date October 16th, 1865, and mentioned and referred to in the said agreement hereinabove set forth, was surrendered up and cancelled at or before the signing of the said contract herein set out.

VI.

Your orators further state and show that the said contract so executed by the said city of Los Angeles with the said John S. Griffin, P. Beaudry, and S. Lazard was, for a valuable consideration, afterwards and before the 19th day of April, 1870, assigned by the said P. Beaudry, Solomon Lazard, and John S. Griffin to the plaintiff, The Los Angeles City Water Company.

9 VII.

The said Beaudry, Lazard, and Griffin and the said plaintiff, The Los Angeles City Water Company, did and have performed all of the terms and conditions of the said contract on their part to be performed.

VIII.

Your orators further state and show that at the time of the execution of the said contract, and at the time of the assignment thereof by the said Griffin, Beaudry, and Lazard to the Los Angeles City Water Company, the city of Los Angeles was a small town, having not more than five or six thousand inhabitants and not more than two or three miles of graded streets, but that since the execution of the said agreement the city of Los Angeles has increased in population until there are now about seventy-five thousand inhabitants, exclusive of the territory that has recently been incorporated into the said city; that buildings of all kinds, business blocks, manufacturing establishments, and residences have been constructed in all parts of the city, and the number of houses of all kinds now being in the said city is probably at least fifteen thousand, and there have been since the date of the said contract con-

structed for the convenience and use of the inhabitants about forty school-houses for use as public schools, and all other kinds of building-, hotels, city hall, jails, county court-house, and jails, theaters, pavilions, and all other sorts of edifices have been constructed and increased in number in accordance with the general growth of the city. Street railways, steam railways have increased in number and the extent of their mileage until there are now probably seventy-five to one hundred miles of street railways laid in the said city and are now being operated, and about seventy-five to one hundred miles of graded streets in said city. Parks have been laid out and improved, and the increased demand for water in the said city has been in greater proportion since the said contract was made and assigned to the said Los Angeles City Water Company than the increase in population.

IX.

Your orators further state and show that in order to perform the contract on the part of the said Los Angeles City Water Company, and especially to extend the iron pipes provided for in the said contract as fast as the people of Los Angeles city desired to be supplied with water for domestic purposes and would agree to take sufficient water to pay ten per cent. per annum interest upon the cost of extending such pipes through the streets which were at that time unsupplied with water, and to obtain a supply of water over and above the said ten inches mentioned in said contract and leased to the said Beaudry, Griffin, and Lazard, an assignment of which said lease was made to the Los Angeles City Water Company, the said Los Angeles City Water Company has been compelled to expend a large amount of money, to wit, more than two millions of dollars, in laying down pipes in the streets of said city to furnish the inhabitants thereof with water, and to furnish water for the public schools, city hospitals, and jails, as in the said contract provided, and have laid down, over and above the twelve miles of iron pipe which they had agreed to lay in the said contract, about three hundred miles of iron pipe, to be used and now used for the purpose of furnishing the said city and its inhabitants with water, in compliance with the terms and conditions of the said contract.

X.

Your orators further state and show that the said ten inches of water so leased by the city of Los Angeles to their assignors of the Los Angeles river long ago became wholly insufficient to supply the inhabitants of said city with water, and, besides, the points from which it was to be taken were at such elevation that it was impossible to take the said water to those portions of the city which in the last twelve or fourteen years have grown up in the general increase and prosperity of the city; and the said Los Angeles City Water Company has, at immense outlays of money, purchased the system that was established by Prudent Beaudry, and known as the Beaudry system of water works, and also the

system established by the East Side Spring Water Company, and has also purchased and now owns and holds certain water rights in the Arroyo Seco (a stream flowing into the city of Los Angeles from the northeastern side), and has conducted the water from the said Arroyo Seco into the said city and on the eastern side of the Los Angeles river for the supply of the inhabitants of that portion of the city, and said systems of works and said water rights are now being used and operated by said Los Angeles City Water Company for the purpose of furnishing the city of Los Angeles and the inhabitants thereof with water under and in pursuance of the said contract.

XI.

Your orators further state and show that about the 22nd day of March, 1843, Manuel Micheltorena, then being the governor of both Californias, appointed under the Mexican government, granted to Maria Ygnacio Berdugo a certain tract of land bounded on the south by the north boundary of the city of Los Angeles, and which said tract was known as the Rancho Los Feliz, and which grant was, after the acquisition of California by the United States, and on or about the 26th day of October, 1852, presented by the said Maria Ygnacio Berdugo to the commissioners appointed to ascertain and settle the private land claims in the State of California under an act of the Congress of the United States entitled "An act to ascertain and settle the private land claims in the State of California, approved March 1st, 1851," for the confirmation of said tract known as the Rancho Los Feliz, and such proceedings were thereupon had that on the 28th day of February, 1854, the said claim was confirmed by the board of land commissioners, and the decree of confirmation was confirmed by the district court of the United States for the southern district of California at its De-
12 cember term in 1856, and it was by the said decree of the said court adjudged that the title of the said Maria Ygnacio Berdugo to the said lands known as the Rancho Los Feliz was good and valid, and the Attorney General of the United States having given notice that the appeal from the said decree of the said district court would not be prosecuted to the Supreme Court of the United States, it was by the said district court, at its December term in 1857, ordered that the said appeal should be, and the same was thereby, dismissed; and it was further decreed that the appellee should have leave to proceed under the decree theretofore made in her favor as under a final decree; and afterwards a survey of the said granted premises was made by and under the authority of the United States; and afterwards, to wit, on the 18th day of April, 1871, a patent was duly issued by the United States to the said Maria Ygnacio Berdugo, giving and granting unto her the said Rancho Los Feliz.

XII.

Your orators further state and show that on the 20th day of October, 1874, a grant was made by Pedro Fajes to Julio Berdugo and others of a certain tract of land of eight square leagues, situated in

Los Angeles county, bounded upon the western side thereof by the Los Angeles river, and known as the San Rafael rancho, and which grant was subsequently, to wit, on the 12th day of January, 1798, confirmed to Jose Maria Berdugo, and after the acquisition of the State of California by the United States Government a claim to the said lands under the said grant was presented to the said board of land commissioners on the 21st day of October, 1852, and said claim to said San Rafael rancho was confirmed by the said board of land commissioners on the 11th day of September, 1855, and finally confirmed by the United States district court on the 4th of June, 1857; and thereafter, to wit, on the 28th day of January,
1882, a patent was duly issued by the Government of the
13 United States, granting the said tract of land known as the San Rafael rancho to Julio Berdugo and Catalina Berdugo; which said patent was issued upon the confirmation of the said grant.

XIII.

Your orators further state and show that many years ago, to wit, in the year 1869, the necessities of the city already requiring more water than the ten inches leased under the said contract, the Los Angeles City Water Company purchased of Charles V. Howard (who had prior to that time acquired the title to the said Los Feliz rancho under the patent from the United States) a portion of the said Los Feliz rancho known as the Crystal Springs tract, in the said Rancho Los Feliz, and cut a ditch from the said Crystal Springs to divert water therefrom to increase the supply of water for the city; that subsequently the Crystal Springs Land and Water Company was duly organized, and the said Crystal Springs tract was conveyed by the said Los Angeles City Water Company to the Crystal Springs Land and Water Company, and that company acquired by purchase from the owners of the remainder of the Los Feliz rancho and from the owners of portions of the said San Rafael rancho the right to enter upon the said lands, parts of the Los Feliz and San Rafael ranchos, to develop and collect together the waters percolating in the soil upon the said ranchos and within the tracts where the said right of development and collection and diversion had been acquired, and the said Crystal Springs Land and Water Company did, at enormous expense, make excavations and lay pipes within the said portions of the said Los Feliz and San Rafael ranchos, and did develop of the percolating waters in the said soil about seven hundred inches of water, measured under a four-inch pressure, and the said waters were conducted by the said Crystal Springs Land and Water Company, under and by virtue of the rights so acquired from the owners of the said lands, to a point to connect the conduits with the system of water
works owned by the Los Angeles City Water Company, and
14 the said Crystal Springs Land and Water Company, by the grants from the owners of the said portions of the said Ranchos Los Feliz and San Rafael where said developments were made, became vested with the right to make the said excavations

and to own, take, divert, and use the waters which they might by the said work develop and by said pipes divert; and having so acquired the said waters and the right to the use and disposition thereof, the said Crystal Springs Land and Water Company did lease to the Los Angeles City Water Company the said seven hundred inches of water, with the right to take the same, and through the said system of works owned by the said Los Angeles City Water Company conduct the same into the city of Los Angeles, and with them to supply the said city and the inhabitants thereof with water, and that the said Los Angeles City Water Company did accept such lease and did agree to pay to the Crystal Springs Land and Water Company twenty-five per cent. of the gross amount received by it, the said Los Angeles City Water Company, for water rates collected within the said city of Los Angeles for the rent thereof.

XIV.

Your orators further state and show that at the time the said developments of said waters were made and the ownership of and right to conduct and use the same was acquired by the Crystal Springs Land and Water Company, and at the time the said lease thereof and of the conduits through which the said waters were conducted was made to the Los Angeles City Water Company, the city of Los Angeles had increased in population and general improvements to such an extent that the acquisition of further water supply was absolutely necessary to enable the Los Angeles City Water Company to perform its said contract and to supply the inhabitants of said city with water.

XV.

Your orators further state and show that in the acquisition of the said water rights and in the development and collection of the said percolating waters, and the construction of the said pipes to convey said percolating waters, and the purchase and laying of water pipes throughout the city of Los Angeles for the purpose of supplying the said city with water, as in the said contract provided, the said two companies, the Los Angeles City Water Company and the Crystal Springs Land and Water Company, have expended large amounts of money, to wit, about three millions of dollars.

XVI.

Your orators further state and show that the said corporations have contracted a bonded indebtedness of $409,000.00, and to secure the payment of the same did convey to the said plaintiff, S. G. Murphy, the said properties and water rights in trust to secure the payment of the said bonded indebtedness to the holders of the said bonds, and the said S. G. Murphy still holds the said property under the said deed of trust to secure the said bonded indebtedness, which said bonded indebtedness is still outstanding and unpaid, and the Los Angeles City Water Company still holds the lease from the

Crystal Springs Land and Water Company of its said water rights and water works under the provisions of the said lease by which it, the said Los Angeles City Water Company, agreed to pay twenty-five per cent. of its gross receipts from water rates in the city of Los Angeles to the said Crystal Springs Land and Water Company as the rent thereof; and your orators further state and show that the said Los Angeles City Water Company has, ever since it acquired the said contract rights of Griffin, Beaudry, and Lazard, been engaged in furnishing the city of Los Angeles and its inhabitants with water under and in pursuance of the said contract; that the said Los Angeles City Water Company has furnished and is still furnishing to the said city water for the public schools, city hospitals, and jails free of charge when the same are near the pipe, the city furnishing the necessary conduits for that purpose; that the said Los Angeles City Water Company has, ever since it acquired the said rights, been placing hydrants, to be used as protection against fire, at one corner of one street at each cross-street, where the pipes were laid down at the time the said contract was made, and have been erecting hydrants at other street corners according to the terms of the said contract as fast as the pipes were extended through the streets of the said city and whenever notified by the said council of the said city of the place at which said hydrants were desired to be placed by the said city, and have been furnishing water to the said city for the extinguishment of fires free of cost, and still are furnishing such water to the said municipality for the said municipal uses without charge, and have in every respect performed and are still performing all of the terms and conditions of the said contract on their part to be performed.

XVII.

Your orators further state and show that in the year 1870, some difficulty arising concerning the rates that were charged for the furnishing of water to the inhabitants of the city at the date the said contract was made between the said Beaudry and others, hereinbefore set forth, commissioners were appointed by the said city for the purpose of ascertaining and determining that amount, and after investigation and examination the said committee reported and the said council accepted the rates hereinafter set forth as being the rates charged at the date of the said contract; that the said rates so ascertained and determined by the said commissioners were accepted by the said city and the Los Angeles City Water Company, and it was agreed between them that the same should be accepted as the rates to be charged by the said Los Angeles City Water Company under the said contract, and of which said rates the following is a copy:

"SECTION 1.	For tenements occupied by a single family of not more than five persons.....	$2.00
	"For each additional person.....	.25
"SECTION 2.	Bathing-tubs in private houses (for each tub)	1.00
	"In public houses, boarding-houses, bath-	
17	ing establishments, barber shops (for each tub)..... ...	3.00
"SECTION 3.	Bakeries according to the monthly use of flour, for each twenty-five barrels.....	2.00
"SECTION 4.	Boarding schools, in addition to the rate for private families, for each scholar.....	.20
"SECTION 5.	Building purposes, by special contract (for each barrel of lime).....	.20
"SECTION 6.	Fountains, by special contract only, and in no case will be permitted on premises where water is not taken for other purposes, and if water be allowed to flow into other premises where it may be used for other purposes, supply will be stopped and the amount of payment forfeited.	
"SECTION 7.	Horses, private, including water for washing carriages, for one horse.....	.25
	"Omnibus, stage, stable, each horse..	.50
	"Truckmen's carts and saddle-horses.....	.50
	"Provided that in no case shall any stable be charged less than.....	2.00
"SECTION 8.	Horse troughs, for each trough on sidewalk.....	$5.00 to 10.00
"SECTION 9.	Hose on premises not having a front of more than twenty-five feet, for the right to attach a hose not exceeding three-fourths of an inch orifice, for washing sidewalks and sprinkling streets, in addition to the charges for other uses	1.00
	"Premises above twenty-five feet in proportion.	
"SECTION 10.	Hotels, taverns, and boarding-houses, not including water for baths or for uses without the house, for each bed for boarders	
18	and lodgers within the same, in addition to the rate for private families	.25
	"For each boarder.....	.20
"SECTION 11.	Lodging-houses, in addition to rate of family keeping the house, for accommodation for each person within the same..... ...	.20
"SECTION 12.	Gardens—sprinkling gardens and grounds, not more than one hundred square yards area.	1.00
	"Above this area, for every one hundred square yards shall be charged..... ..	.12

"SECTION 13.	Porter-houses, groceries, refectories, etc., shall be charged at the discretion of the water register.....	$2.00 to 10.00
"SECTION 14.	Printing offices at the discretion of the water register.	
"SECTION 15.	Railroad corporations, rate subject to special agreement in accordance with the quantity of water used.	
"SECTION 16.	Steame-ngines, according to the quantity used at the discretion of the water register.	
"SECTION 17.	Stores, offices and warehouses, and tenements not included in any other classification, and requiring only an ordinary amount of water, at the discretion of the water register, not less than.....	2.00
"SECTION 18.	Water-closet—for each water-closet, public..	2.00
	"Water-closet—for each water-closet, private.	1.00
"SECTION 19.	For large quantities of water, when the quantity used does not exceed 15,000 gallons per month, there shall be charged for each 1,000 gallons consumed, as ascertained by meter or otherwise.....	1.25
19	"When the quantity is over 15,000 gallons per month, for each 1,000 gallons.....	1.00
	"For water used for manufacturing and mechanical purposes, under 10,000 gallons per month.....	1.00
	"Above 10,000 gallons per month, per 1,000 gallons	.75
"SECTION 20.	The board of trustees have power in all cases to ascertain by meters or otherwise the quantity of water used by any consumer, and to establish a rate for that consumer in accordance with the quantity so ascertained, instead of the special rate given above.	
"SECTION 21.	For water required for purposes which are not specified in the above tariff, the rate shall be fixed by the water register.	
"SECTION 22.	The company will insert the tap and introduce the service pipe to the curbstone by their authorized tapper for.....	12.00
	"The pipe and fittings remain the property of the company.	
"SECTION 23.	All water rates payable monthly in advance.	
"SECTION 24.	The water register will, upon personal examination of the premises of any applicant for water, fix upon its rate, his decision being subject to modifications by the board of trustees.	

"SECTION 25. Payments will not be received for a less period than one month.

"Applicants for water at any time after the first day of any month shall pay their rate to the end of the following month; that all of said rates are payable monthly in advance in U. S. gold or silver coin."

20 XVIII.

Your orators further state and show that the said contract between the mayor and common council of the city of Los Angeles and the said Prudent Beaudry, S. Lazard, and John S. Griffin was duly ratified by the act of the legislature of the State of California approved April 2nd, 1870, entitled "An act to ratify certain acts and ordinances of the mayor and common council of the city of Los Angeles," and the same is still in full force.

And the said rates, so hereinbefore set forth, as agreed upon by the parties as the rates charged at the time the said contract was made, were the rates that were then so charged.

XIX.

Your orators further state and show that the said defendant, The City of Los Angeles, has ever since the making of the said contract and the assignment thereof to the said Los Angeles City Water Company recognized the existence of the contract, and has in every year demanded of the said Los Angeles City Water Company the performance of the various terms and conditions of the said contract on its part, and has, as often as the public necessity or convenience required, demanded of the said Los Angeles City Water Company the erection of fire-hydrants at the street corners, as in the said contract provided, and the said Los Angeles City Water Company has uniformly complied with the said demands and erected the said fire-hydrants, and that these demands have continued up to the time of the commencement of this action, and fire-hydrants were demanded at the same time of the passage of the ordinance fixing the rates to be charged by the said Los Angeles City Water Company in the year 1897, as hereinafter more fully set forth, and the said Los Angeles City Water Company has been during all the time and is now, upon the demand of the said city of Los Angeles and in accordance with the said contract and not otherwise, furnishing water for sprinkling the streets of Los Angeles city and for all the public uses and purposes hereinbefore mentioned free
21 of charge, and the said city has been accepting the same and making use of the waters so provided and furnished by the said Los Angeles City Water Company for the said purposes and without paying or offering to pay anything therefor to the said Los Angeles City Water Company, and it has recognized the contract obligation of the said Los Angeles City Water Company to do and perform all the said things under the said contract and has recognized and insisted upon the right of the said city of Los Angeles to

receive the benefits of the said contract aforesaid and all the benefit provided for in the said agreement.

XX.

Your orators further state and show that the said Los Angeles City Water Company has no income or revenue from any other source other than from the water rates collected by it for furnishing water to the inhabitants of the said city of Los Angeles with which to pay the rental agreed upon to the said Crystal Springs Land and Water Company for the property owned by it and by said company, leased to the said Los Angeles City Water Company, nor with which to pay the interest upon the bonded indebtedness of the said company, to secure the payment of which a trust deed was executed to the said S. G. Murphy, nor with which to continue to extend its pipes and improve its system, to meet the constantly increasing needs of the said city of Los Angeles, which said city is now increasing in population at a rapid rate, not only by the influx of immigrants to the said city, but also by the incorporating into the said city other territory than that which was within its limit at the time the said contracts were made, and the increase in the number of buildings in said city is going on at a more rapid rate than ever before in its history; that buildings are now being erected in the said city at the rate of five or six per day, and that with each new building new connections are required to be made, and as the different portions of the city increase in population and in the number of the houses to be supplied, new extensions of the pipe along other streets not yet supplied with water become necessary from time to time, and the expense
22 of keeping up with the progress of the said city and its increase of population and edifices of all sorts and of the necessity of water for sprinkling the graded streets is very great; and the said Los Angeles City Water Company has been compelled to expend, within the last three years, more than four hundred thousand dollars in laying larger pipes and extending its pipe system to tracts that had before been unsupplied with water, and that the sole source of revenue with which to pay for such improvements, repairs, maintenance, and expenses of administering the system and to pay interest on the bonds issued by it, to borrow money for such improvements, expenses, maintenance, and repairs, where the revenues of the company were too small for that purpose, is the water rates charged for furnishing water to the said inhabitants of said city.

XXI.

Your orators further state and show that the people of the State of California did, in the year 1879, adopted a constitution, to take effect on and after the 4th day of July, 1879, so far as the same related to the election of officers, the commencement of their terms, and the meeting of the legislature, and in all other respects and for all other purposes, to take effect on the first day of January,

1880, at 12 o'clock meridian, and that by the said constitution it was provided in article XIV as follows, to wit:

"ARTICLE XIV, SECTION I. The use of all water now appropriated, or that may hereafter be appropriated, for sale, rental or distribution, is hereby declared to be a public use and subject to the regulation and control of the State, in the manner to be prescribed by law; provided that the rates or compensation to be collected by any person, company or corporation in this State for the use of water supplied to any city and county, or city or county, or the inhabitants thereof, shall be fixed annually by the board of supervisors, or city and county, or city or town council, or other governing body of such city and county, or city or town, by ordinance, or otherwise, in the manner that other ordinances or legislative acts or resolutions are passed
23 by such body, and shall continue in force for one year and no longer. Such ordinances or resolutions shall be passed in the month of February of each year, and take effect on the first day of July thereafter. Any board or body failing to pass the necessary ordinances or resolutions, fixing water rates, where necessary, within such time, shall be subject to peremptory process to compel action, at the suit of any party interested, and shall be liable to such further processes and penalties as the legislature may prescribe. Any person, company or corporation collecting water rates in any city and county, or city or town in this State, otherwise than as so established, shall forfeit the franchises and water works of such person, company or corporation, to the city and county, or city or town, where the same are collected for the public use.

"SECTION 2. The right to collect rates or compensation for the use of water supplied to any county, city and county, or town, or the inhabitants thereof, is a franchise and may not be exercised except by authority of and in the manner prescribed by law."

XXII.

Your orators further state and show that the legislature of the State of California did, at its session held in 1881, claiming to be authorized by the said provisions of the constitution so to do, passed an act entitled "An act to enable the board of supervisors, town council, board of aldermen, or other legislative body of any city and county, city or town, to obtain data and information from any corporation, company or person supplying water to such city and county, city or town, requiring such boards, town council or other legislative body to perform the duties prescribed by section 1, of article XIV, of the constitution and prescribing the penalties for the nonperformance of such duties," and which said act was approved March 7th, 1881. The said act did, among other things, declare in its first section that the board of supervisors, town council, board of aldermen, or other legislative body of any city and county, or city or
24 town, were thereby authorized and empowered, and it was made their official duty, to annually fix the rates that should be charged and collected by any person, company, association, or

corporation for water furnished to any such city and county, or city or town, or the inhabitants thereof; and further enacting that such rates should be fixed at a regular or special session of such board or other legislative body during the month of February of each year, and should take effect on the 1st day of July thereafter, and should continue in full force and effect for the term of one year and no longer; and such act further provided that such legislative body of any city and county, city or town, should require by ordinance or otherwise, at least thirty days prior to the 15th day of January of each year, that any corporation, company, or person supplying water to such city and county, city or town, or to the inhabitants thereof, should furnish to such board or other governing body, in the month of January in each year, a detailed statement, verified by the oath of the president and secretary of such corporation or company or of such person, as the case might be, showing the name of each water rate payer, his or her place of residence, and the amount paid for water by each of such water-rate payers during the year preceding the date of such statement, and also showing all revenue derived from all sources, and an itemized statement of expenditures made for supplying water during said time; and it further provided in the sixth section thereof as follows:

"Rates for the furnishing of water shall be equal and uniform. There shall be no discrimination made between persons, or between persons and corporations, or as to the use of water for private and domestic and public or municipal purposes; provided, that nothing herein contained shall be so construed as to allow any person, company, association or corporation to charge any person, company, corporation or association anything for water furnished them, when by any present law such water is free."

And in the said act it was further provided, in section 7, as follows:

"Any person, company, association or corporation charging, or attempting to collect, from the persons, corporations or municipalities using water, any sum in excess of the rate fixed as hereinbefore designated, shall, upon the complaint of such board of supervisors, town council, board of aldermen, or other legislative body thereof, or of any water-rate payer, and upon conviction before any court of competent jurisdiction, shall forfeit the franchises and water works of such person, company, association or corporation to the city and county, city or town, wherein the said water is furnished and used."

And it was further provided in the said act, in section 8 thereof, that any board of supervisors, or other legislative body of any city and county, or city or town, which should fail or refuse to perform any of the duties prescribed by the said act, at the time and in the manner thereinbefore specified, should be deemed guilty of malfeasance in office, and upon conviction thereof, at the suit of any interested party, in any court of competent jurisdiction, should be removed from office.

XXIII.

And your orators further state and show that the electors of the city of Los Angeles did, in the year 1888, in pursuance of the provisions of the constitution of the State of California aforesaid, authorizing them so to do, adopt a charter for the said city, and which said charter was, under the provisions of the said constitution, submitted to the legislature of the State of California for its approval, ratification, and adoption, and the said charter was, on the 31st day of January, 1889, adopted by the said legislature of the State of California, and thereupon became and ever since has been the charter of the said city of Los Angeles, and by the said charter of the said city of Los Angeles it is provided, in section 193, as follows, to wit:

26 "The rates of compensation for use of water to be collected by any person, company, or corporation in said city shall be fixed annually by ordinance and shall continue in force for one year, and no longer. Such ordinance shall be passed in the month of February of each year, and take effect on the first day of July thereafter. Should the council fail to pass the necessary ordinance fixing the water rates within the time thereinbefore prescribed, it shall be subject to peremptory processes to compel action, at the suit of any party interested."

XXIV.

And your orators further state and show that at the time of the grant of the franchise to the said Griffin, Beaudry, and Lazard and at the time of the organization of the said Los Angeles City Water Company and of the assignment of the said franchise to it, as hereinbefore alleged, there was no law of the State of California attaching or attempting to attach to an overcharge for water rates the penalty of the forfeiture of the property of said company, and no such condition or limitation was contained in the grant of the said franchise to the assignors of the said Los Angeles City Water Company, nor did any such condition subsequent for the defeating of the title to the property in such franchises and water works or forfeiting the same to the municipality ever exist prior to the adoption of the constitution aforesaid.

XXV.

Your orators further state and show that the said provisions of the constitution of the State of California attempting to confer upon the said legislative body of the city of Los Angeles the power to regulate the rates to be charged by the said Los Angeles City Water Company, so as to authorize them to make such regulations as to fix a lower rate than that charged at the time mentioned in the said contract, impairs the obligation of the contract made between the said city of Los Angeles and the assignors of the said Los Angeles City Water Company and the contract with the

27 said Los Angeles City Water Company and is in violation of that provision of the Constitution of the United States pro-

hibiting any State from passing any law impairing the obligation of contracts, and the provisions of the said constitution and acts of the legislature aforesaid are all in violation of the said provision of the Constitution of the United States, and are also in violation of the XIV amendment to the Constitution of the United States, prohibiting any State from depriving any person of life, liberty, or property without due process of law and prohibiting the said States from denying to any person with- *its* jurisdiction the equal protection of the laws.

And your orators further state and show that the attempt in the constitution of the State of California and the acts of the legislature to create a condition in the estate of the said Los Angeles City Water Company in its said property whereby its title is to be defeated, and which condition did not exist at the time it acquired the said property and was not contained in the grant to its assignors, is an attempt to deprive the said Los Angeles City Water Company of its property without due process of law.

XXVI.

Your orators further state and show that the said council of the city of Los Angeles did, at its meeting of February 23rd, 1897, pass an ordinance regulating the rates and compensation allowed to be collected by any person or corporation supplying water for domestic and private purposes to the inhabitants of the city of Los Angeles during the year commencing July 1st, 1897, and ending June 30th, 1898, claiming authority under the provisions of the constitution of the State of California aforesaid and under the acts of the legislature of the State of California and the charter of the said city, hereinbefore mentioned, and by which said ordinance the rates to be charged by the said Los Angeles City Water Company were fixed at amounts far less than those charged at the date of the said contract and hereinbefore set forth, and of which said ordinance the following is a full, true, and correct copy:

28 "The mayor and council of the city of Los Angeles do ordain as follows:

"SEC. 1. That the monthly rates to be collected by any person or corporation engaged in the business of supplying water to the inhabitants of the city of Los Angeles for domestic and private purposes for the year commencing July the first, 1897, and ending June thirtieth, 1898, are hereby fixed as follows:

"For every tenement or dwelling house of not exceeding three living rooms, occupied by a single family, 50 cents.

"For every tenement or dwelling house of four living rooms, occupied by a single family, 55 cents.

"For every tenement or dwelling house of five living rooms, occupied by a single family, 70 cents.

"For every tenement or dwelling house of six living rooms, occupied by a single family, 85 cents.

"For every tenement or dwelling house of seven living rooms, occupied by a single family, 90 cents.

"For every tenement or dwelling house of eight living rooms, occupied by a single family, $1.10.

"For every tenement or dwelling house of nine living rooms, occupied by a single family, $1.15.

"For every tenement or dwelling house of ten living rooms, occupied by a single family, $1.25.

"For every tenement or dwelling house of over ten living rooms occupied by a single family, for every additional room, 5 cents.

"For hotels or boarding-houses, in addition to family rates, for each boarder, ten cents.

"For lodging-houses, in addition to family rates, for each lodger, 5 cents.

"For business blocks, for each office, in addition to a basis rate of $2.00, 8 cents.

"For private fire-hydrants, each 25 cents.

29 "For restaurants and eating-houses, according to daily average of people fed, for each twenty-five people per day, $1.75.

"For bath-tubs in private residences, each tub, 15 cents, for bath-tubs in hotels and lodging-houses, for guests only, each tub 50 cents.

"For public bath-tubs, each tub $1.25.

"For public urinals, each 75 cents.

"For private urinals, each 35 cents.

"For water-closets in private residences, 15 cents.

"For public water-closets, in business blocks, 75 cents.

"For public water-closets, in stores, 35 cents.

"For public water-closets, in hotels, $1.20.

"For sprinkling lawns and gardens, .009 of a cent per front foot for lots not exceeding 150 feet depth.

"For all additional area a proportionate rate shall be charged. Provided that the sprinking rate for no yard shall be less than 25 cents. Also that when the amount of lawn or shrubbery, or both, does not exceed forty square yards, the minimum rate of 25 cents shall be charged.

"For horses kept for private use, including water for washing vehicle, one horse 15 cents; each additional horse 5 cents.

"For livery, boarding and hack stables, including water for washing vehicles, for each horse 25 cents.

"For feed and sale stables where no wash-rack is used, for each horse, 10 cents.

"For each water trough in public streets, $1.30.

"For bakeries, in addition to family rates, for each barrel of flour used, 3 cents.

"For barber shops, for each chair, 30 cents.

"For boarding schools, in addition to family rates, for each pupil, 5 cents.

"For each soda fountain 85 cents.

"For steam-engines, for each horse-power, 35 cents.

30 "For building purposes, for each 100 yards of plastering, 35 cents.

"For cement walks, for each 100 square feet, 15 cents.

"For cement curbs, for each 100 lineal feet, 30 cents.

"For each 1,000 brick laid, including wetting of brick and slacking of lime, 10 cents.

"For each saloon, not including water-closets or urinals, $1.50.

"For each water beer pump, 75 cents.

"For stores, warehouses, butcher shops, confectionery shops, halls, photograph galleries, printing offices, markets, book-binderies, blacksmith shops, and for other purposes not enumerated above, 75 cents.

"All railroads, distilleries, breweries, elevators, machine shops, manufactories and all consumers not mentioned above requiring large quantities of water shall be governed by the following

"*Meter Rates.*

"For each 100 cubic feet in quantities of 2,000 cubic feet or less, 20 cents.

"For each 100 cubic feet, over 2,000, 15 cents.

"SEC. 2. All rates except meter rates are due and payable in advance and meter rates are due and payable at the end of the month excepting that a deposit may be required thereon for not exceeding three-fourths of the estimated quantity of water used.

"SEC. 3. Any person who shall charge, demand, collect or receive, either as owner, agent, collector or employé of any water company or person furnishing water to the inhabitants of said city for domestic use or private purposes, any rate or compensation for water furnished to the inhabitants of the city of Los Angeles in excess of the rates fixed by this ordinance shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in a sum not to exceed $100.00 or shall be imprisoned in the city jail for a term not exceeding ninety days or shall suffer both such fine and imprisonment.

"SEC. 4. The city clerk shall certify to the passage of this ordinance and shall cause it to be published once in the Los Angeles Evening Express and thereupon and thereafter it shall take effect and be in force.

"I hereby certify that the foregoing ordinance was adopted by the council of the city of Los Angeles at its meeting of February 23rd, 1897.

"(Signed) C. H. HANCE,
"*City Clerk.*"

And your orators further state and show that under the provisions of the said ordinance and at the rates therein fixed the revenues of the said Los Angeles City Water Company will be reduced more than forty per cent. below the amount which it would receive at the said rates charged in 1868, and hereinbefore set forth, for the same services, and its ability to make the necessary extensions and construct the necessary improvements to meet the wants and keep up with the progress of the said city of Los Angeles will be greatly impaired, and the amount of rent that the said Crystal Spring

Land and Water Company would receive will be forty per cent. less than it is entitled to receive, and the ability of the said Los Angeles City Water Company to pay its interest upon the outstanding bonds and maintain the operating expenses and repairs and improvements necessary for the proper administration of its system, and to comply with the contract made by it and its assignors with the said city of Los Angeles, will be greatly impaired, and the said company will not only be deprived of the revenues which it ought to receive, but will be unable to carry on its said business and to properly perform the contract hereinbefore set forth and the terms thereof on its part to be performed.

XXVII.

Your orators further state and show that if, when the said ordinance goes into effect, according to its terms, the said Los Angeles City Water Company should attempt to charge more than the
32 rates so fixed, your orators are informed and believe, and therefore allege, that the said city of Los Angeles would claim that the property of the said Los Angeles City Water Company was forfeited to the said city, and would attempt to enforce such forfeiture; and your orators cannot maintain the rights which they possess under the said several contracts hereinbefore set forth except at the peril of the loss of the said property and the certainty of their being greatly interfered with by the said city of Los Angeles in their attempts to maintain and operate the same.

XXVIII.

Your orators further state and show that the matter in dispute in this action exceeds, exclusive of interest and costs, the sum or value of one hundred and fifty thousand dollars.

To the end, therefore, that your orators may obtain relief in the premises in this court (where alone adequate relief can be afforded), they pray that the said City of Los Angeles may be required to answer the allegations of this bill (but not under oath, an answer under oath being waived), and that upon the final hearing of this cause it be decreed that the said ordinance passed on February 23rd, 1897, by the said council of the city of Los Angeles, fixing the water rates to be charged by the said Los Angeles City Water Company for furnishing water to the said city and to the inhabitants, is null and void, and that the same is in violation of the contract rights of the said Los Angeles City Water Company and of these plaintiffs, and that the said council be commanded to regulate the water rates to be charged by the said Los Angeles City Water Company, but in such manner and for such rates fixed by it as that they shall not so reduce such water rates or so fix the prices therefor to be less than those charged by the said Griffin, Beaudry, and Lazard at the time of the execution of the said contract on the 22nd day of July, A. D. 1868, and which said rates are set forth in the said bill, and for a decree enjoining the said council of the
33 city of Los Angeles from fixing the said water rates at any less amount until the determination of the said contract, and

that your orators may obtain the relief prayed for and all such further or other relief as the nature of the case may require, may it please your honors to grant to your orators the writ of subpœna against the said City of Los Angeles.

WHITE AND MONROE AND
J. S. CHAPMAN,
Solicitors for Complainants.

UNITED STATES OF AMERICA,
District of Southern California.

At the city of Los Angeles, in the county of Los Angeles and district aforesaid, this 27th day of February, in the year A. D. 1897, personally appeared before me, Ward Chapman, a notary public in and for said county of Los Angeles, State of California, S. H. Mott, the secretary of the Los Angeles City Water Company and also of the Crystal Springs Land and Water Company, and made oath that the facts set forth in the foregoing bill, so far as they purport to be stated as of his own knowledge, are true, and so far as they purport to be stated on information and belief he believes them to be true.

S. H. MOTT.

Subscribed and sworn to before me this 27th day of February, 1897.

WARD CHAPMAN,
[SEAL.] *Notary Public in and for the County of Los Angeles, State of California.*

(Endorsed:) No. 734. In the United States circuit court, ninth circuit, southern district of California. Los Angeles City Water Co. *et al.*, plaintiffs, *vs.* City of Los Angeles *et al.*, defendant-. Bill of complaint. Filed Mar. 4, 1897. Wm. M. Van Dyke, clerk. White & Monroe and Jno. S. Chapman, attorneys for complainants.

34 5, 6, '96—250.

UNITED STATES OF AMERICA:

Circuit Court of the United States, Ninth Circuit, Southern District of California. In Equity.

The President of the United States of America to the City of Los Angeles, Herman Silver, Z. D. Matthuss, L. M. Grider, E. L. Blanchard, C. H. Toll, James Ashman, E. L. Hutchison, F. M. Nickell, and F. L. Baker, composing the council of the city of Los Angeles, Greeting:

You are hereby commanded that you be and appear in said circuit court of the United States aforesaid, at the court-room, in Los Angeles, on the fifth day of April, A. D. 1897, to answer to a bill of complaint exhibited against you in said court by the Los Angeles City Water Company, a corporation organized under and in pursuance of the laws of the State of California and having its princi-

pal place of business in the city of Los Angeles, county of Los Angeles, in said State, and the Crystal Springs Land and Water Company, a corporation organized under and in pursuance of the laws of the said State of California and having its principal place of business in the city of Los Angeles, and S. G. Murphy, who is a citizen of the State of California, and to do and receive what the said court shall have considered in that behalf; and this you are not to omit under the penalty of five thousand dollars.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 4th day of March, in the year of our Lord one thousand eight hundred and ninety-seven, and of our Independence the one hundred and twenty-first.

[SEAL.] WM. M. VAN DYKE, *Clerk*,
By —— ——, *Deputy Clerk*.

35 *Memorandum Pursuant to Rule* 12, *Supreme Court U. S.*

You are hereby required to enter your appearance in the above suit on or before the first Monday of April next, at the clerk's office of said court, pursuant to said bill; otherwise the said bill will be taken *pro confesso*.

WM. M. VAN DYKE, *Clerk*,
By —— ——, *Deputy Clerk*.

UNITED STATES MARSHAL'S OFFICE,
SOUTHERN DISTRICT OF CALIFORNIA.

I hereby certify that I received the within writ on the 4th day of March, 1897, and personally served the same on the 4th day of March, 1897, on the City of Los Angeles, Herman Silver, Z. D. Matthuss, L. M. Grider, E. L. Blanchard, C. H. Toll, James Ashman, E. L. Hutchison, F. M. Nickell, and F. L. Baker, composing the council of the city of Los Angeles, by delivering to and leaving with each, M. P. Snyder, mayor of the city of Los Angeles; Herman Silver, Z. D. Matthuss, L. M. Grider, E. L. Blanchard, C. H. Toll, James Ashman, E. L. Hutchison, F. M. Nickell, and F. L. Baker, said defendants named therein, personally, at the county of Los Angeles, in said district, a certified copy thereof, certified to by Wm. M. Van Dyke, Esq., clerk, &c.

N. A. COVARRUBIAS,
U. S. Marshal,
By —— ——, *Deputy*.

Los Angeles, March 5th, 1897.

(Endorsed:) Original. No. 734. U. S. circuit court, ninth circuit, southern district of California. In equity. Los Angeles City Water Company *et al. vs.* The City of Los Angeles *et al.* Subpœna. Filed Mar. 5, 1897. Wm. M. Van Dyke, clerk.

36 In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

LOS ANGELES CITY WATER COMPANY, CRYSTAL SPRINGS Land and Water Company, and S. G. Murphy, Complainants,
vs.
THE CITY OF LOS ANGELES, HERMAN SILVER, ET AL., Composing the Council of the City of Los Angeles, Defendants.
} No. 734.

Now come the above-named defendant, The City of Los Angeles, and takes the exceptions hereinafter set forth to the bill of complaint of complainants for expunging the impertinent matter therein contained.

1st. Defendants except to the whole of paragraph VIII, pages 8 and 9 of said bill, for that the same is impertinent.

2nd. Defendants except to the whole of paragraph IX, page 9 of said bill, for that the same is impertinent.

3rd. Defendants except to the whole of paragraph X, pages 9 and 10 of said bill, for that the same is impertinent.

4th. Defendants except to the whole of paragraph XI, pages 10 and 11 of said bill, for that the same is impertinent.

5th. Defendants except to the whole of paragraph XII, pages 11 and 12, for that the same is impertinent.

6th. Defendants except to the whole of paragraph XIII, pages 12 and 13 of said bill, for that the same is impertinent.

7th. Defendants except to the whole of paragraph XIV, page 14 of said bill, for that the same is impertinent.

8th. Defendants except to the whole of paragraph XV, page 14 of said bill, for that the same is impertinent.

9th. Defendants except to all that portion of paragraph XVI of said bill from the commencement of said paragraph in line
37 27, page 14, down to and including the word "thereof," in line 10, page 15, for that the same is impertinent.

10th. Defendants except to the whole of paragraph XIX, pages 20 and 21 of said bill, for that the same is impertinent.

11th. Defendants except to all that portion of paragraph XXVI of said bill, commencing with the word "and," in line 4, page 31, and ending with the word "receive," in line 6, page 31 of said bill, for that the same is impertinent.

In all of which particulars these exceptants except to said bill as impertinent and pray that the said impertinent matter may be expunged therefrom.

W. E. DUNN,
Solicitor for Defendants.
LEE AND SCOTT, *Of Counsel.*

(Endorsed:) No. 734. In the circuit court of the United States, ninth circuit, southern dist. of California. Los Angeles City Water Co. *et als.*, comp'ts, *vs.* Los Angeles City. Service admitted June 7,

1897. White & Monroe, J. S. Chapman, att'y- for complainants. Filed Jun- 7, 1897. Wm. M. Van Dyke, clerk. Lee & Scott, attorneys-at-law, Los Angeles, California.

38 In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

LOS ANGELES CITY WATER COMPANY, CRYSTAL SPRINGS Land and Water Company, and S. G. Murphy, Complainants,
vs.
THE CITY OF LOS ANGELES, HERMAN SILVER, ET AL., Composing the Council of the City of Los Angeles, Defendants. } No. 734.

Now come the above-named defendants, Herman Silver *et als.*, composing the council of the city of Los Angeles, and take the exceptions hereinafter set forth to the bill of complaint of complainants for expunging the impertinent matter therein contained.

1st. Defendants except to the whole of paragraph VIII, pages 8 and 9 of said bill, for that the same is impertinent.

2nd. Defendants except to the whole of paragraph IX, page 9 of said bill, for that the same is impertinent.

3rd. Defendants except to the whole of paragraph X, pages 9 and 10 of said bill, for that the same is impertinent.

4th. Defendants except to the whole of paragraph XI, pages 10 and 11 of said bill, for that the same is impertinent.

5th. Defendants except to the whole of paragraph XII, pages 11 and 12, for that the same is impertinent.

6th. Defendants except to the whole of paragraph XIII, pages 12 and 13 of said bill, for that the same is impertinent.

7th. Defendants except to the whole of paragraph XIV, page 14 of said bill, for that the same is impertinent.

8th. Defendants except to the whole of paragraph XV, page 14 of said bill, for that the same is impertinent.

39 9th. Defendants except to all that portion of paragraph XVI of said bill from the commencement of said paragraph, in line 27, page 14, down to and including the word "thereof," in line 10, page 15, for that the same is impertinent.

10th. Defendants except to the whole of paragraph XIX, pages 20 and 21 of said bill, for that the same is impertinent.

11th. Defendants except to all that portion of paragraph XXVI of said bill commencing with the word "and," in line 4, page 31, and ending with the word "receive," in line 6, page 31, of said bill for that the same is impertinent.

In all of which particulars these exceptants except to said bill as impertinent, and pray that the said impertinent matter may be expunged therefrom.

W. E. DUNN,
Solicitor for Defendants.
LEE AND SCOTT, *Of Counsel.*

(Endorsed:) No. 734. In the circuit court of the United States, ninth circuit, southern district of California. Los Angeles City Water Co. *et als.*, compl't-, *vs.* City of Los Angeles *et als.*, def'ts. Defendants' exceptions to complainants' bill of complaint. Service admitted this 7 day of June, 1897. White & Monroe, J. S. Chapman, att'ys for compl'ts. Filed Jun- 7, 1897. Wm. M. Van Dyke, clerk. W. E. Dunn and Lee & Scott, Los Angeles, California, sols for def'ts.

40 In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

LOS ANGELES CITY WATER COMPANY, Crystal Springs Land & Water Company, and S. G. Murphy, Complainants,
vs.
THE CITY OF LOS ANGELES, HERMAN Silver, *et al.*, Composing the Council of the City of Los Angeles, Defendants.

No. 734. Demurrer of the City of Los Angeles, Defendant.

This defendant, The City of Los Angeles, not confessing all or any of the matters in the bill of complaint contained to be true as therein set forth, and not waiving the exceptions to said bill of complaint this day served and filed herein, but saving and reserving to itself any and all advantages that may or might be taken by said exceptions to said bill, does demur to said bill on the following grounds:

I. For that the same does not state such a case nor contain any matter of equity entitling the complainants, or any of them, to any relief against this defendant.

II. For that the subject of this suit is not within the jurisdiction of this court, nor has the court jurisdiction of the subject-matter of said bill or of the parties thereto or any of them.

III. For that several distinct and independent matters and causes which have no relation to each other, and in which or in the greater part of which this defendant is in no way interested, or connected and ought not to be implicated, and by reason of such distinct matters the said bill is drawn out to a considerable length and this defendant is compelled to take a copy of the whole thereof,

41 and by joining distinct matters together which do not depend on each other the proceedings in the progress of the said suit will be intricate and prolix and this defendant put to unnecessary charges and expenses in matters which in no way relate to or concern this defendant or tend to sustain the cause or causes of complaint set forth in said bill, and particularly in this: that there is set forth in said bill a statement of the title of the complainants Crystal Springs Land and Water Company and S. G. Murphy, trustee, to certain waters in said bill described, with a history of the mode of acquiring such title, which matter is wholly un-

necessary to sustaining the complainant's cause of relief against the ordinance sought in said bill to be set aside, either on the ground that such ordinance is in violation of the alleged contract between the defendant The City of Los Angeles and Griffin, Lazard, and Beaudry, set forth in said bill, or because the same reduces the water rate therein provided for below a reasonable charge.

IV. The complainant Crystal Springs Land and Water Company is improperly joined with the complainant Los Angeles City Water Company, inasmuch as it appears from the said bill that said Crystal Springs Land and Water Company has no interest in the subject-matter of said bill or in the relief sought to be obtained thereby, and the complainant S. G. Murphy is improperly joined with each of the other complainants in said bill, inasmuch as it appears that said S. G. Murphy has no interest in the subject-matter of said bill or in the relief sought to be obtained thereby.

V. For that said bill is vague and uncertain, in this: that the equitable right upon which the complainants rely for relief is not stated with sufficient clearness, nor does it appear from said bill whether the complainants rely for such relief upon the allegations of said bill tending to show that the ordinance sought in said bill to be set aside is in violation of the contract between the defendant The City of Los Angeles and Griffin, Beaudry, and Lazard, mentioned in said bill, or upon the allegations tend-
42 ing to show that said ordinance reduced the water rates therein provided for below a reasonable charge; and in this: that it does not appear therefrom whether or not complainants intend to state a cause of complaint that the water rates established by the ordinance sought in said bill to be set aside have the effect of reducing the compensation received by complainant Los Angeles City Water Company for furnishing water to this defendant and its inhabitants below a reasonable amount or below an amount necessary to yield said complainant a reasonable interest on the capital invested in its property or on the value thereof; and in this: that it does not appear from said bill whether the transfer of said contract alleged in said bill to have been made by the said Griffin, Beaudry, and Lazard to the complainant Los Angeles City Water Company was made prior to or subsequent to the act of the legislature approved April 2nd, 1870, mentioned in said bill, or whether or not said act of the legislature inured to the benefit of the complainant Los Angeles City Water Company, or whether or not the same had already inured to the benefit of the said Griffin, Beaudry, and Lazard; and in this: that it cannot be ascertained from said bill whether or not the water rates fixed in said ordinance sought in said bill to be set aside reduced such water rates below a reasonable charge or so reduced said water rates as not to allow to the complainant Los Angeles City Water Company a reasonable compensation for said water and a reasonable interest upon the amount of the capital invested in the water works or what compensation is allowed to the complainant Los Angeles City Water Company for the water supplied by it to the defendant The City of Los Angeles and its inhabitants, or what expenses are incurred by the complain-

ant Los Angeles City Water Company in maintaining the said water works and furnishing water to said defendant, The City of Los Angeles, and its inhabitants, or what interest the bonded indebtedness mentioned in paragraph sixteen bears, or whether or not the net revenue derived by the complainant Los Angeles
43 City Water Company from the water rates allowed in said last-mentioned ordinance is not sufficient to enable it to pay the said interest, besides the other expenses of maintaining its water works and supplying water to the defendant The City of Los Angeles and its inhabitants.

VI. For that there is a misjoinder of parties defendant in said bill of complaint herein, in this: that this defendant, The City of Los Angeles, is improperly joined herein with Herman Silver and the other defendants composing the council of the city of Los Angeles.

VII. For that there is a misjoinder of parties defendant in said bill of complaint herein, in this: that the said defendants, Herman Silver *et als.*, composing the council of the city of Los Angeles, are improperly joined herein with this defendant.

And this defendant, not confessing all or any of the matters in the bill of complaint contained to be true as therein set forth, and not waiving the exceptions to said bill of complaint this day served and filed herein, but saving and reserving to itself any and all advantages that may or might be taken by said exceptions to said bill, demur further to that part and those portions of said bill setting forth the alleged contract between the defendant The City of Los Angeles and Griffin, Beaudry, and Lazard and the matters and things done by said Griffin, Beaudry, and Lazard and the complainant Los Angeles City Water Company and the defendant The City of Los Angeles in regard to said alleged contract, the same containing a statement of the complainants' cause of complaint that the ordinance sought in the bill of complaint to be set aside and adopted by authority of the provision of the constitution of the State of California set forth in said bill impairs the obligation of said contract and is in violation of the Constitution of the United States, for that the same does not state such a case nor contain any matter of equity entitling the complainants to any relief against defendant.

44 And this defendant, not confessing all or any of the matters in the bill of complaint to be true as therein set forth, and not waiving the exceptions to said bill of complaint this day served and filed herein, but saving and reserving to itself any and all advantages that may or might be taken by said exceptions to said bill, demur further to that part and those portions of said bill containing a statement of complain-ts' cause of complaint; that the ordinance sought in the bill of complaint to be set aside and adopted by authority of the provisions of the constitution of the State of California set forth in said bill deprives the complainants of their property without due process of law in reducing the water rates established by said ordinance below a reasonable charge, for that the same does not state such a case nor contain any matter of equity entitling the complainants to any relief against this defendant.

And does further demur to paragraph six of said bill of complaint

for that said paragraph is vague and uncertain, in this: that it cannot be ascertained therefrom when the assignment therein referred to was made, or whether or not such assignment was made prior or subsequent to the passage of the act of the legislature of this State mentioned in paragraph eighteen of said bill, or whether or not the complainant Los Angeles City Water Company held said contract at the time of the passage of said act.

And does further demur to paragraph seven of said bill of complaint for that said paragraph is vague and uncertain, in this: that it does not appear therefrom what acts were done by Beaudry, Lazard, and Griffin and the complainant Los Angeles City Water Company in performance of the terms and conditions of the contract referred to in said paragraph, or how they have performed all of the terms and conditions of said contract on their part to be performed.

And does demur to paragraph fifteen of said bill of complaint for that the same is vague and uncertain, in this: that it does
45 not appear therefrom for what purpose the expenditure of $3,000,000.00 was made, as therein alleged, or whether or not the same was made for permanent improvements, or whether or not the whole or a portion thereof was made for repairs to supply deteriorations occasioned by ordinary wear and tear, or what is the value of the water works of complainants, or what is the amount of the capital invested or value of the property upon which a reasonable interest should be allowed complainants for furnishing water to the defendant The City of Los Angeles and its inhabitants.

And does demur to that portion of paragraph sixteen of said bill of complaint alleging a bonded indebtedness, for that the same is vague and uncertain, in this: that it does not appear therefrom what interest the bonded indebtedness therein mentioned bears.

And does further demur to that portion of paragraph twenty-six of said bill of complaint alleging that the revenues of complainant Los Angeles City Water Company will be reduced forty per cent. below the amount which it would receive at the rates charged in 1868 for the same services, and that its ability to make the necessary extensions and to construct the necessary improvements to meet the wants and keep up with the progress of the city of Los Angeles will be greatly impaired, and its ability to pay its interest on outstanding bonds and maintain the operating expenses and repairs and improvements necessary for the proper administration of its system and to comply with said contract will be greatly impaired, and that said company will not only be deprived of the revenues which it ought to receive, but will be unable to carry on its said business and to properly perform said contract, for that the same is vague and uncertain, in this: that it does not appear therefrom how much the revenues of said complainant, Los Angeles City Water Company, will be reduced, nor to what extent or how its ability to make said extensions and construct said improvements will be impaired, nor to what extent or how its ability to pay said interest and maintain said expenses and repairs and improvements will be
46 impaired, nor how it will be unable to carry on said business or perform said contract, nor what are the revenues derived

by said company from the sale of water supplied to said defendant, The City of Los Angeles, and its inhabitants, nor what are the expenses of complainant in supplying water to said defendant, The City of Los Angeles, and its inhabitants.

Wherefore, and for divers other errors and imperfections appearing in said bill, this defendant demands the judgment of this court whether it shall be compelled to further answer said bill or said portions of said bill hereinbefore demurrer to, and it prays to be hence dismissed with its reasonable costs in this behalf sustained.

W. E. DUNN,
LEE AND SCOTT,
Solicitor- and Counsellors for Defendant.

We hereby certify that the foregoing demurrer is, in our opinion, well founded in point of law.

LEE AND SCOTT,
Counsel for Defendant.

STATE OF CALIFORNIA, }
County of Los Angeles, } *ss:*

C. H. Hance, being first duly sworn, on oath says that he is an officer of the city of Los Angeles, to wit, the city clerk thereof, and as such makes this affidavit for and on behalf of said city of Los Angeles, and that the foregoing demurrer is not interposed for delay.

C. H. HANCE.

Subscribed and sworn to before me this 7th day of June, A. D. 1897.

[SEAL.]

S. M. HASKINS,
Notary Public in and for the County of Los Angeles, State of California.

(Endorsed:) Original. No. 734. U. S. circuit court, 9th circuit, so. dist. of Cal. Los Angeles county, State of California. Los Angeles City Water Co. *et als.*, complainants, *vs.* City of Los Angeles, defendants. Demurrer of City of Los Angeles. Received
47 copy of within this 7 day of June, 1897. White & Monroe, J. S. Chapman, sol. for complainants. Filed Jun- 7, 1897. Wm. M. Van Dyke, clerk. W. E. Dunn, Lee and Scott, for defendants.

48 In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

LOS ANGELES CITY WATER COMPANY, CRYSTAL SPRINGS LAND & WATER COMPANY, and S. G. MURPHY, Complainants,
vs.
THE CITY OF LOS ANGELES, HERMAN SILVER, *et al.*, Composing the Council of the City of Los Angeles, Defendants.

No. 734. Demurrer of Herman Silver *et als.*, Defendants.

These defendants, Herman Silver *et al.*, composing the council of the city of Los Angeles, not confessing all or any of the matters in the bill of complaint contained to be true as therein set forth, and not waiving the exceptions to said bill of complaint this day served and filed herein, but saving and reserving to *itself* any and all advantages that may or might be taken by said exceptions to said bill, do*es* demur to said bill on the following grounds:

I. For that the same does not state such a case nor contain any matter of equity entitling the complainants or any of them to any relief against these defendants.

II. For that the subject of this suit is not within the jurisdiction of this court, nor has the court jurisdiction of the subject-matter of said bill or of the parties thereto or any of them.

III. For that several distinct and independent matters and causes which have no relation to eac*t* other, and in which or in the greater part of which these defendants are in no way interested, *or* connected and ought not to be implicated, and by reason of such distinct matters said bill is drawn out to a considerable length, and this defendant is compelled to take a copy of the whole thereof,
49 and by joining distinct matters together which do not depend on each other the proceedings in the progress of the said suit will be intricate and prolix and these defendants put to unnecessary charges and expenses in matters which in no way relate to or concern these defendants or tend to sustain the cause or causes of complaint set forth in said bill, and particularly in this: that there is set forth in said bill a statement of the title of the complainants Crystal Springs Land and Water Company and S. G. Murphy, trustee, to certain waters in said bill described, with a history of the mode of acquiring such title, which matter is wholly unnecessary to sustaining the complainants' cause of relief against the ordinance sought in said bill to be set aside, either on the ground that such ordinance is in violation of the alleged contract between the defendant The City of Los Angeles and Griffin, Lazard, and Beaudry, set forth in said bill, or because the same reduces the water rate therein provided for below a reasonable charge.

IV. The complainant Crystal Springs Land and Water Company is improperly joined with the complainant Los Angeles City Water Company, inasmuch as it appears from the said bill that said Crystal Springs Land and Water Company has no interest in the subject-matter of said bill or in the relief sought to be obtained thereby,

and the complainant S. G. Murphy is improperly joined with each of the other complainants in said bill, inasmuch as it appears that said S. G. Murphy has no interest in the subject-matter of said bill or in the relief sought to be obtained thereby.

V. For that said bill is vague and uncertain, in this: that the equitable right upon which the complainants rely for relief is not stated with sufficient clearness, nor does it appear from said bill whether the complainants rely for such relief upon the allegations of said bill tending to show that the ordinance sought in said bill to be set aside is in violation of the contract between the defendant The City of Los Angeles and Griffin, Beaudry, and Lazard, mentioned in said bill, or upon the allegations tending
50 to show that said ordinance reduced the water rates therein provided for below a reasonable charge, and in this: that it does not appear therefrom whether or not complainants intend to state a cause of complaint that the water rates established by the ordinance sought in said bill to be set aside have the effect of reducing the compensation received by complainant Los Angeles City Water Company for furnishing water to this defendant and its inhabitants below a reasonable amount or below an amount necessary to yield said complainant a reasonable interest on the capital invested in its property or on the value thereof, and in this: that it does not appear from said bill whether the transfer of said contract alleged in said bill to have been made by the said Griffin, Beaudry, and Lazard to the complainant Los Angeles City Water Company was made prior to or subsequent to the act of the legislature approved April 2nd, 1870, mentioned in said bill, or whether or not said act of the legislature inured to the benefit of the complainant Los Angeles City Water Company, or whether or not the same had already inured to the benefit of the said Griffin, Beaudry, and Lazard, and in this: that it cannot be ascertained from said bill whether or not the water rates fixed in said ordinance sought in said bill to be set aside reduced such water rates below a reasonable charge or so reduced said water rates as not to allow to the complainant Los Angeles City Water Company a reasonable compensation for said water and a reasonable interest upon the amount of the capital invested in the water works, or what compensation is allowed to the complainant Los Angeles City Water Company for the water supplied by it to the defendant The City of Los Angeles and its inhabitants, or what expenses are incurred by the complainant Los Angeles City Water Company in maintaining the said water works and furnishing water to said defendant, The City of Los Angeles, and its inhabitants, or what interest the bonded indebtedness mentioned in paragraph sixteen bears, or whether or not the net
51 revenue derived by the complainant Los Angeles City Water Company from the water rates allowed in said last-mentioned ordinance is not sufficient to enable it to pay the said interest besides the other expenses of maintaining its water works and supplying water to the defendant The City of Los Angeles and its inhabitants.

VI. For that there is a misjoinder of parties defendant in said bill of complaint herein, in this: that these defendants are improperly joined with the said defendant, The City of Los Angeles.

VII. For that there is a misjoinder of parties defendant in said bill of complaint herein, in this: that the defendant The City of Los Angeles is improperly joined with these defendants.

And these defendants, not confessing all or any of the matters in the bill of complaint contained to be true as therein set forth and not waiving the exceptions to said bill of complaint this day served and filed herein, but saving and reserving to themselves any and all advantages that may or might be taken by said exceptions to said bill, demur further to that part and those portions of said bill setting forth the alleged contract between the defendant The City of Los Angeles and Griffin, Beaudry, and Lazard and the matters and things done by said Griffin, Beaudry, and Lazard and the complainant Los Angeles City Water Company and the defendant The City of Los Angeles in regard to said alleged contract, the same containing a statement of the complainants' cause of complaint; that the ordinance sought in the bill of complaint to be set aside and adopted by authority of the provisions of the constitution of the State od California, set forth in said bill, impairs the obligation of said contract and is in violation of the Constitution of the United States, for that the same does not state such a case nor contain any matter of equity entitling the complainants to any relief against defendant-.

And these defendants, not confessing all or any of the matters in the bill of complaint to be true as therein set forth, and not waiving the exceptions to said bill of complaint this day served
52 and filed herein, but saving and reserving to themselves any and all advantages that may or might be taken by said exceptions to said bill, demur further to that part and those portions of said bill containing a statement of complain-ts' cause of complaint; that the ordinance sought in the bill of complaint to be set aside and adopted by authority of the provisions of the constitution of the State of California, set forth in said bill, deprives the complainants of their property without due process of law in reducing the water rates established by said ordinance below a reasonable charge, for that the same does not state such a case nor contain any matter of equity entitling the complainants to any relief against these defendants.

And do further demur to paragraph six of said bill of complaint, for that said paragraph is vague and uncertain, in this: that it cannot be ascertained therefrom when the assignment therein referred to was made, or whether or not such assignment was made prior or subsequent to the passage of the act of the legislature of this State mentioned in paragraph eighteen of said bill, or whether or not the complainant Los Angeles City Water Company held said contract at the time of the passage of said act.

And do further demur to paragraph seven of said bill of complaint, for that said paragraph is vague and uncertain, in this: that

it does not appear therefrom what acts were done by Beaudry, Lazard, and Griffin and the complainant Los Angeles City Water Company in performance of the terms and conditions of the contract referred to in said paragraph or how they have performed all of the terms and conditions of said contract on their part to be performed.

And do demur to paragraph fifteen of said bill of complaint, for that the same is vague and uncertain, in this: that it does not appear therefrom for what purpose the expenditure of $3,000,000.00 was made, as therein alleged, or whether or not the same was made for permanent improvements, or whether or not the whole or a portion thereof was made for repairs to supply deteriorations
53 occasioned by ordinary wear and tear, or what is the value of the water works of complainant, or what is the amount of the capital invested or value of the property upon which a reasonable interest should be allowed complainants for furnishing water to the defendant The City of Los Angeles and its inhabitants

And do demur to that portion of paragraph sixteen of said bill of complaint alleging a bonded indebtedness, for that the same is vague and uncertain, in this: that it does not appear therefrom what interest the bonded indebtedness therein mentioned bears.

And do further demur to that portion of paragraph twenty-six of said bill of complaint alleging that the revenues of complainant Los Angeles City Water Company will be reduced forty per cent. below the amount which it would receive at the rates charged in 1868 for the same services, and that its ability to make the necessary extensions and to construct the necessary improvements to meet the wants and keep up with the progress of the city of Los Angeles will be greatly impaired, and its ability to pay its interest on outstanding bonds and maintain the operating expenses and repairs and improvements necessary for the proper administration of its system and to comply with said contract will be greatly impaired, and that said company will not only be deprived of the revenues which it ought to receive, but will be unable to carry on its said business and to properly perform said contract, for that the same is vague and uncertain, in this: that it does not appear therefrom how much the revenues of said complainant, Los Angeles City Water Company, will be reduced, nor to what extent or how its ability to make said extensions and construct said improvements will be impaired, nor to what extent or how its ability to pay said interest and maintain said expenses and repairs and improvements will be impaired, nor how it will be unable to carry on said business or perform said contract, nor what are the revenues derived by said company from the sale of water supplied to said defendant, The City of Los Angeles, and its inhabitants, nor what are the expenses of complainant in supplying water to said defendant, The City of Los Angeles, and its inhabitants.

54 Wherefore, and for divers other errors and imperfections appearing in said bill, these defendants demands the judgment of this court whether they or any of them shall be compelled to further answer said bill or said portions of said bill hereinbefore

demurred to, and they pray to be hence dismissed with reasonable costs in this behalf sustained.

W. E. DUNN,
LEE AND SCOTT,
Solicitor- and Counsellors for Defendant.

We hereby certify that the foregoing demurrer is in our opinion well founded in point of law.

LEE AND SCOTT,
Counsel for Defendant.

STATE OF CALIFORNIA, } ss:
County of Los Angeles, }

Herman Silver, being first duly sworn, on oath says that he is one of the defendants in the above-entitled action, to wit, one of the members of said city council, and as such makes this affidavit for and in behalf of himself and his said codefendants, comprising the council of the city of Los Angeles, and that the foregoing demurrer is not interposed for delay.

HERMAN SILVER.

Subscribed and sworn to before me this 7th day of June, A. D. 1897.

[SEAL.] S. M. HASKINS,
Notary Public in and for the County of Los Angeles, State of California.

(Endorsed:) Original. No. 734. U. S. circuit court, 9 circuit, so. dist. of Cal., Los Angeles county, State of California. Los Angeles City Water Co. *et als.*, complainants, *vs.* City of Los Angeles, defendants. Demurrer of Herman Silver *et al.*, city council. Received copy of within this 7th day of June, 1897. White & Monroe, J. S. Chapman, sols. for complainants. Filed Jun- 7, 1897. Wm. M. Van Dyke, clerk. W. E. Dunn, Lee and Scott, sls. for defendants.

55 At a stated term, to wit, the January term, A. D. 1897, of the circuit court of the United States of America of the ninth judicial circuit in and for the southern district of California, held at the court-room, in the city of Los Angeles, on Tuesday, the fifteenth day of June, in the year of our Lord one thousand eight hundred and ninety-seven.

Present: The Honorable Olin Wellborn, district judge.

LOS ANGELES CITY WATER COMPANY ET AL., Complainants,
vs.
THE CITY OF LOS ANGELES ET AL., Defendants. } No. 734.

This cause having heretofore been submitted to the court for its consideration and decision upon the exception of the defendant The City of Los Angeles to the bill of complaint of complainants

for expunging the impertinent matter therein contained, and the court having duly considered the same and being fully advised in the premises, it is now, on this 15th day of June, 1897, being a day in the January term, A. D. 1897, of the circuit court of the United States for the southern district of California, ordered that of said exceptions the 4th and 5th be, and hereby are, allowed, and that the others be, and hereby are, overruled.

I, Wm. M. Van Dyke, clerk of the circuit court of the United States for the southern district of California, do hereby certify the foregoing to be a full, true, and correct copy of an original order made and entered by said court June 15th, 1897, in the cause entitled Los Angeles City Water Company *et al.*, complainants, *vs.* The City of Los Angeles *et al.*, defendants, No. 734, and remaining of record therein.

Attest my hand and the seal of said circuit court this 20th day of June, A. D. 1898.

[SEAL.] WM. M. VAN DYKE, *Clerk.*

56 (Endorsed:) No. 734. U. S. circuit court, ninth circuit, southern district of California. Los Angeles City Water Company *et al. vs.* The City of Los Angeles *et al.* Certified copy order allowing 4th & 5th exceptions of defendant The City of Los Angeles to bill of complaint. Filed Jun- 20, 1898. Wm. M. Van Dyke, clerk.

57 At a stated term, to wit, the January term, A. D. 1897, of the circuit court of the United States of America of the ninth judicial circuit in and for the southern district of California, held at the court-room, in the city of Los Angeles, on Tuesday, the fifteenth day of June, in the year of our Lord one thousand eight hundred and ninety-seven.

Present: The Honorable Olin Wellborn, district judge.

LOS ANGELES CITY WATER COMPANY ET AL., Complainants, *vs.* THE CITY OF LOS ANGELES ET AL., Defendants. } No. 734.

This cause having heretofore been submitted to the court for its consideration and decision upon the exceptions of the defendants Herman Silver *et al.*, composing the council of the city of Los Angeles, to the bill of complaint of complainants for expunging the impertinent matter therein contained, and the court having duly considered the same and being fully advised in the premises, it is now, on this 15th day of June, 1897, being a day in the January term, A. D. 1897, of the circuit court of the United States for the southern district of California, ordered that of said exceptions the 4th and 5th be, and hereby are, allowed, and that the others be, and hereby are, overruled.

I, Wm. Van Dyke, clerk of the circuit court of the United States for the southern district of California, do hereby certify the foregoing to be a full, true, and correct copy of an original order made and entered by said court June 15th, 1897, in the cause entitled Los Angeles City Water Company *et al.*, complainants, *vs.* The City of Los Angeles *et al.*, defendants, No. 734, and remaining of record therein.

58 Attest my hand and the seal of said circuit court this 20th day of June, A. D. 1898.

[SEAL.] WM. M. VAN DYKE, *Clerk.*

(Endorsed:) No. 734. U. S. circuit court, ninth circuit, southern district of California. Los Angeles City Water Company *et al. vs.* The City of Los Angeles *et al.* Certified copy order allowing 4th and 5th exceptions of defendants Herman Silver *et al.* to bill of complaint. Filed Jun- 20, 1898. Wm. M. Van Dyke, clerk.

59 At a stated term, to wit, the January term, A. D. 1897, of the circuit court of the United States of America of the ninth judicial circuit in and for the southern district of California, held at the court-room, in the city of Los Angeles, on Monday, the twenty-first day of June, in the year of our Lord one thousand eight hundred and ninety-seven.

Present: The Honorable Olin Wellborn, district judge.

LOS ANGELES CITY WATER COMPANY ET AL., Complainants, *vs.* THE CITY OF LOS ANGELES ET AL., Defendants. } No. 734.

It is ordered that the order of the court made and entered on the 15th day of June, 1897, allowing the 4th and 5th exceptions taken by the defendant The City of Los Angeles to complainants' bill of complaint be, and the same hereby is, amended so as to read as follows: This cause having heretofore been submitted to the court for its consideration and decision upon the exceptions of the defendant The City of Los Angeles to the bill of complaint of complainants for expunging the impertinent matter therein contained, and the court having duly considered the same and being fully advised in the premises, it is now, on this 15th day of June, 1897, being a day in the January term, A. D. 1897, of the circuit court of the United States for the southern district of California, ordered that of said exceptions the 4th and 5th be, and hereby are, allowed, and that the others be, and hereby are, overruled; to which rulings of the court the respective parties, complainant and defendant, are allowed exceptions.

60 I, Wm. M. Van Dyke, clerk of the circuit court of the United States for the southern district of California, do hereby certify the foregoing to be a full, true, and correct copy of an original order made and entered by said court June 21st, 1897, in the

cause entitled Los Angeles City Water Company *et al.*, complainants, *vs.* The City of Los Angeles *et al.*, defendants, No. 734, and remaining of record therein.

[SEAL.] Attest my hand and the seal of said circuit court this 20th day of June, A. D. 1898.

WM. M. VAN DYKE, *Clerk.*

(Endorsed:) No. 734. U. S. circuit court, ninth circuit, southern district of California. Los Angeles City Water Company *et al. vs.* The City of Los Angeles *et al.* Certified copy order amending order of June 15th, 1897. Filed Jun- 20, 1898. Wm. M. Van Dyke, clerk.

61 At a stated term, to wit, the January term, A. D. 1897, of the circuit court of the United States of America of the ninth judicial circuit in and for the southern district of California, held at the court-room, in the city of Los Angeles, on Monday, the twenty-first day of June, in the year of our Lord one thousand eight hundred and ninety-seven.

Present: The Honorable Olin Wellborn, district judge.

LOS ANGELES CITY WATER COMPANY ET AL., Complainants,
vs.
THE CITY OF LOS ANGELES ET AL., Defendants. } No. 734.

It is ordered that the order of court made and entered herein on the 15th day of June, 1897, allowing the 4th and 5th exceptions taken by the defendants Herman Silver *et al.*, composing the council of the city of Los Angeles, to complainants' bill of complaint be, and the same hereby is, amended so as to read as follows: This cause having heretofore been submitted to the court for its consideration and decision upon the exceptions of the defendants Herman Silver *et als.*, composing the council of the city of Los Angeles, to the bill of complaint of complainants for expunging the impertinent matter therein contained, and the court having duly considered the same and being fully advised in the premises, it is now, on this 15th day of June, 1897, being a day in the January term, A. D. 1897, of the circuit court of the United States for the southern district of California, ordered that of said exceptions the 4th and 5th be, and hereby are, allowed, and that the others be, and hereby are, overruled; to which rulings of the court the respective parties, complainants and defendants, are allowed exceptions.

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Attest my hand and the seal of said circuit court this 20th day of June, A. D. 1898.

[SEAL.] WM. M. VAN DYKE, *Clerk.*

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63 At a stated term, to wit, the January term, A. D. 1897, of the circuit court of the United States of America of the ninth judicial circuit in and for the southern district of California, held at the court-room, in the city of Los Angeles, on Thursday, the twenty-ninth day of July, in the year of our Lord one thousand eight hundred and ninety-seven.

Present: The Honorable Olin Wellborn, district judge.

LOS ANGELES CITY WATER COMPANY ET AL., Complainants, *vs.* THE CITY OF LOS ANGELES ET AL., Defendants. } No. 734.

This cause having heretofore been submitted to the court for its consideration and decision upon the demurrer of defendant The City of Los Angeles to complainants' bill of complaint, and the court having duly considered the same and being fully advised in the premises, it is now, on this 29th day of July, 1897, being a day in the January term, A. D. 1897, of said circuit court of the United States for the southern district of California, ordered that said demurrer be, and the same hereby is, overruled; to which ruling of the court defendants, by counsel, F. J. Thomas, Esq., duly note an exception. It is further ordered that defendants have three weeks from Monday, the 2nd of August, 1897, within which to answer complainants' bill of complaint.

64 I, Wm. M. Van Dyke, clerk of the circuit court of the United States for the southern district of California, do hereby certify the foregoing to be a full, true, and correct copy of an original order made and entered by said court July 29th, 1897, in the cause entitled Los Angeles City Water Company *et al.*, complainants, *vs.* The City of Los Angeles *et al.*, defendants, No. 734, and remaining of record therein.

Attest my hand and the seal of said circuit court this 20th day of June, A. D. 1898.

[SEAL.] WM. M. VAN DYKE, *Clerk.*

(Endorsed:) No. 734. U. S. circuit court, ninth circuit, southern district of California. Los Angeles City Water Company *et al. vs.* The City of Los Angeles *et al.* Certified copy overruling demurrer of defendant The City of Los Angeles to bill of complaint. Filed Jun- 20, 1898. Wm. M. Van Dyke, clerk.

65 At a stated term, to wit, the January term, A. D. 1897, of the circuit court of the United States of America of the ninth judicial circuit in and for the southern district of California, held at the court-room, in the city of Los Angeles, on Thursday, the twenty-ninth day of July, in the year of our Lord one thousand eight hundred and ninety-seven.

Present: The Honorable Olin Wellborn, district judge.

LOS ANGELES CITY WATER COMPANY ET AL., Complainants,
vs.
THE CITY OF LOS ANGELES ET AL., Defendants. } No. 734.

This cause having heretofore been submitted to the court for its consideration and decision upon the demurrer of defendants Herman Silver *et al.*, composing the council of the city of Los Angeles, to complainants' bill of complaint, and the court having duly considered the same and being fully advised in the premises, it is now, on this 29th day of July, 1897, being a day in the January term, A. D. 1897, of said circuit court of the United States for the southern district of California, ordered that said demurrer be, and the same hereby is, overruled; to which ruling of the court defendants, by counsel, F. J. Thomas, Esq., duly note an exception. It is further ordered that defendants have three weeks from Monday, the 2nd of August, 1897, within which to answer complainants' bill of complaint.

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[SEAL.] WM. M. VAN DYKE, *Clerk.*

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67 In the Circuit Court of the United States, Ninth Circuit, for the Southern District of California.

LOS ANGELES CITY WATER COMPANY ET AL., Complainants,
vs.
THE CITY OF LOS ANGELES ET AL., Defendants.

The answer of The City of Los Angeles, one of the defendants, to the bill of complaint of The Los Angeles City Water Company, Crystal Springs Land and Water Company, and S. G. Murphy, complainants.

This defendant, now and at all times hereafter, saving and reserving unto itself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainants' said bill of complaint contained, and of the exceptions heretofore taken by this defendant to said bill of complaint, and of the demurrer heretofore interposed by it to said bill of complaint, for answer thereto, or unto so much thereof and such part as this defendant is advised is or are material or necessary for it to make answer unto, this defendant, for answering, saith:

1. This defendant denies that on or about the 22nd day of July, 1868, or at any other time, this defendant or the mayor and common council of the city of Los Angeles, named in said bill of complaint, or any predecessor of this defendant, entered into the written contract, a copy whereof is set forth in paragraph IV of said bill of complaint, or any other contract whereby this defendant or said mayor and common council of the city of Los Angeles or any predecessor of this defendant agreed with J. S. Griffin, P. Beaudry, and
68 Solomon Lazard, named in said bill of complaint, or any one or more — them, that the water rates to be charged by said Griffin, Beaudry, and Lazard, or any one or more of them, or any other person, should not exceed a certain amount, or by which this defendant or said mayor and common council of the city of Los Angeles, or any predecessor of this defendant, agreed that the legislature of this State or this defendant or any predecessor of this defendant should not have the absolute and uncontrolled right to fix and establish water rates to be charged by said Griffin, Beaudry, and Lazard, or any one or more of them, or any other person or corporation for supplying water to said city or its inhabitants.

And this defendant alleges that at the time of the alleged execution of said pretended contract set forth in paragraph IV of said bill of complaint the laws of the State of California prohibited any municipal corporation from entering into any contract with any person or corporation whereby such municipal corporation or the legislature of this State might be deprived of the absolute and uncontrolled right and power to establish and fix water rates to be charged by any person or corporation supplying water to such municipal corporation or its inhabitants, and that said mayor and common council of the city of Los Angeles had no power or author-

ity to enter into said pretended contract set forth in paragraph IV of said bill of complaint, so far as it purports to restrict the uncontrolled and absolute right and power of said mayor and common council and its successors and the legislature of the State of California in fixing and establishing the water rates to be charged by said Griffin, Beaudry, and Lazard and their assigns for water to be supplied by them to the inhabitants of said city of Los Angeles.

2. This defendant admits that said pretended contract set forth in paragraph IV of said bill of complaint was assigned by said Griffin, Beaudry, and Lazard to the complainant Los Angeles City Water Company, and this defendant alleges that said assignment was made not later than the 12th day of June, 1869.

69 3. This defendant upon information and belief denies that the said Griffin, Beaudry, and Lazard and the complainant Los Angeles City Water Company or any one or more of them have performed all of the terms and conditions of said pretended contract set forth in said paragraph IV of said bill of complaint on their part to be performed; and this defendant alleg-s that said complainant, Los Angeles City Water Company, has, among other violations and breaches of said pretended contract, ever since the 20th day of October, 1896, without the consent of this defendant or of said mayor and common council of the city of Los Angeles and in violation of said pretended contract, continuously taken from the Los Angeles river, mentioned in said bill of complaint, for the use of the water works also mentioned in said bill more than the quantity of ten inches of water measured under a four-inch pressure, to wit, several hundred inches, measured under a four-inch pressure, and continuously appropriated and converted the same to the use and benefit of said complainant, Los Angeles City Water Company, and deprived this defendant of the same, to its great damage.

4. This defendant has no information upon the subject sufficient to enable it to answer the allegations of said bill of complaint in reference thereto, and it therefore denies that in order to perform the pretended contract mentioned in paragraph IV of said bill on the part of said Los Angeles City Water Company, or to extend the iron pipes provided for in said pretended contract as fast as the people of said Los Angeles city desired to be supplied with water for domestic purposes and would agree to take sufficient water to pay ten per cent. per annum interest upon the cost of extending said pipes through the streets which were at that time unsupplied with water, or to obtain a supply of water over and above the said ten inches mentioned in said pretended contract, or for any other purpose or purposes, the complainant Los

70 Angeles City Water Company has been compelled to spend a large amount of money, to wit, more than two millions of dollars, or any other sum of money in excess of seventy-five thousand dollars, in laying down pipes in the streets of said city to furnish the inhabitants thereof with water or to furnish water for the public schools, city hospitals, or jails, as in said pretended contract provided or otherwise, or that said complainant, Los Angeles City Water Company, has laid down over and above

the 12 miles of water pipe which they had purported in said pretended contract to agree to lay down about 300 miles of water pipe or any other quantity of water pipe in excess of ten miles, to be used or now used for the purpose of furnishing said city and its inhabitants with water in compliance with the terms and conditions of said pretended contract or for any other purpose or purposes or at all.

5. This defendant on information and belief denies that the points from which water was to be taken by said complainant, Los Angeles City Water Company, to supply the inhabitants of said city with water were at such elevations that it was impossible to take the water to those portions of said city which in the last 12 or 14 years *years* have grown up in the general prosperity of the city.

This defendant has no information upon the subject sufficient to enable it to answer the allegations of said bill in reference thereto, and it therefore denies that the complainant Los Angeles City Water Company has, at an immense or other outlay of money or otherwise, purchased the system that was established by Prudent Beaudry and known as the Beaudry system of water works or the system established by the East Side Springs Water Company, or has purchased or now owns or holds certain water rights in the Arroyo Seco mentioned in paragraph X of said bill of complaint, or is taking water from the said Arroyo Seco into said city on the eastern side of the Los Angeles river or elsewhere for the supply of
71 the inhabitants of that portion of the city or elsewhere, or that said systems of works and said water rights or any of them or any part thereof *is* now being used or operated by said Los Angeles City Water Company for the purpose of furnishing the city of Los Angeles and the inhabitants thereof with water under or in pursuance of said pretended contract mentioned in paragraph IV of said bill or for any other purpose or at all.

6. This defendant has no information upon the subject sufficient to enable it to answer the allegations of said bill of complaint in reference thereto, and it therefore denies that the complainant Los Angeles City Water Company purchased of Charles V. Howard, named in paragraph XIII of said bill, a portion of Los Felis rancho, known as Crystal Springs tract, or any part thereof, or any other land, or that said Charles V. Howard had, prior to the year 1869 or at any other time, acquired the title to said Los Felis rancho or any part thereof, embracing said Crystal Springs tract or any part thereof, under the patent from the United States or otherwise, or that subsequently or at any other time said Crystal Springs tract or any part thereof was conveyed by said Los Angeles City Water Company, or at all, to the Crystal Springs Land and Water Company, or that said Crystal Springs Land and Water Company acquired by purchase from the owners of the remainder of the Los Felis rancho and from the owners of portions of the San Rafael rancho, or at all, the right to enter upon the said lands, parts of the Los Felis and San Rafael ranchos, or any part thereof, to develop or collect together the waters percolating in the soil upon said ranchos or any part thereof within the tracts where the rights of development and col-

lection and diversion is alleged in said paragraph XIII to have been acquired or elsewhere, or that said Crystal Springs Land and Water Company did, at an enormous or other expense, or at all, make excavations or any excavation or lay pipes or any pipe within
72 the portions of the said Los Felis and San Rafael ranchos mentioned in said bill or elsewhere.

This defendant denies on information and belief that the complainant Crystal Springs Land and Water Company did develop of the percolating waters in the soil mentioned in paragraph XIII of said bill of complaint about 700 inches of water under a four-inch pressure, or any other amount of water, or that said waters alleged in said paragraph to have been developed by said Crystal Springs Land and Water Company, or any part thereof, was conducted by said Crystal Springs Land and Water Company, under or by virtue of the pretended rights alleged in said paragraph to have been acquired from the owners of said lands, or otherwise, to a point to connect the conduits with the system of water works owned by the complainant Los Angeles City Water Company, or elsewhere, or that said Crystal Springs Land and Water Company, by the grants from the owners of the portions of said Ranchos Los Felis and San Rafael, where said developments are alleged in said paragraph XIII to have been made or otherwise, became vested with the right to make such excavations or excavation or any other excavation, or to own, take, divert, or use the waters which said Crystal Springs Land and Water Company might by the alleged works mentioned in said paragraph develop, or by said pipes or any pipe or pipes divert.

This defendant upon information and belief denies that the complainant Crystal Springs Land and Water Company did acquire the waters mentioned in said paragraph XIII or any part thereof, or the right to the use or disposition thereof, or did lease to the complainant Los Angeles City Water Company the said 700 inches of water mentioned in said paragraph or any part thereof, or the right to take the same through the system of works alleged in said paragraph to be owned by said complainant, Los Angeles City Water Company, or through any other system, or to conduct the same or any part thereof into said Los Angeles city to supply said
73 city or the inhabitants thereof with water for domestic purposes or for any other purpose or at all.

This defendant admits that on the 13th day of December, 1886, the complainant Los Angeles City Water Company made a pretended deed of conveyance to said complainant, Crystal Springs Land and Water Company, whereby said Los Angeles City Water Company did purport to convey, without consideration, certain pretended water rights, lands, and water works; and also that on the 30th day of December, 1886, said complainant, Crystal Springs Land and Water Company, made a pretended lease to the complainant Los Angeles City Water Company, purporting to lease to said Los Angeles City Water Company all of the property so purported to have been conveyed to said Crystal Springs Land and Water Company by said last-mentioned deed of conveyance, as aforesaid, upon

the terms that said Los Angeles City Water Company would pay to said Crystal Springs Land and Water Company monthly 40 per cent. of the gross earnings and receipts realized by said Los Angeles City Water Company from the sale of water during the term of said pretended lease, to wit, eleven years from January 1st, 1887; but this defendant alleges upon information and belief that said Crystral Springs Land and Water Company was organized and incorporated in the month of November, 1886, by all of the then stockholders of the complainant Los Angeles City Water Company, and that all of the capital stock of said Crystal Springs Land and Water Company was, upon its incorporation, subscribed and taken by said stockholders of said Los Angeles City Water Company in the same proportion in which said stockholders then held the capital stock of said Los Angeles City Water Company, and that the capital stock of said Crystal Springs Land and Water Company has ever since been held by all of the stockholders of said Los Angeles City Water Company in the same proportions in which they have held the capital stock of said Los Angeles City Water Company, and that at the time of the execution of said last-mentioned pretended deed of conveyance and at the time of the execution of said last-mentioned pretended
74 lease all of the stockholders of said Los Angeles City Water Company were and composed all of the stockholders of said Crystal Springs Land and Water Company, and said stockholders of said Los Angeles City Water Company then held and owned all of the stock of said Crystal Springs Land and Water Company in the same proportions in which they then held and owned the capital stock of said Los Angeles City Water Company, and that both of said companies were at the time of the incorporation of said Crystal Springs Land and Water Company and ever since have been practically one company and controlled by the same stockholders and officers, and that the pretended incorporation of said Crystal Springs Land and Water Company was simulated and not effected in good faith and was procured by the stockholders of said Los Angeles City Water Company for the purpose of making it the apparent owner of all of the property and rights of said Los Angeles City Water Company outside of the said city of Los Angeles, and in order to pretend that said Los Angeles City Water Company was incurring an expense for the rental of the water and other property used by it in supplying water to the city of Los Angeles and its inhabitants; and this defendant alleges on information and belief that in truth and fact said Los Angeles City Water Company never paid and has never been under any obligation to pay to any person or corporation other than this defendant any rental for the use of any water furnished to the city of Los Angeles or its inhabitants, but all of the pretended rental mentioned in said pretended lease has always been divided among all of the stockholders of said complainant, Los Angeles City Water Company, in proportion to the amount of capital stock in said company held by them respectively.

7. This defendant denies that at the time mentioned in paragraph XIV of said bill of complaint or at any other time the acquisition

of a further water supply was necessary to enable the com-
75 plainant Los Angeles City Water Company to perform the pretended contract mentioned in said paragraph, or to supply the inhabitants of the city of Los Angeles with water; but, on the contrary, this defendant alleges that it was always ready, able, and willing to furnish a full and adequate supply of water for all of the purposes needed by said complain-t, and especially sufficient water from the Los Angeles river, mentioned in the pretended contract, set forth in paragraph IV of said bill, to supply said city and its inhabitants with water for domestic use and all other purposes, for a reasonable charge and price, not exceeding that which said Los Angeles City Water Company pretended to contract to pay said Crystal Springs Land and Water Company in and by said simulated lease mentioned in paragraph VIII of said bill.

8. That this defendant has no information upon the subject sufficient to enable it to answer the allegations of the bill of complaint in reference thereto, and it therefore denies, that in the acquisition of the alleged water rights mentioned in paragraph XV of said bill, or in the alleged development or collection of the alleged percolating water mentioned in said paragraph, or in the construction of the pipes to carry said waters, or in the purchase or laying of the water pipes throughout the city of Los Angeles, mentioned in said paragraph, for the purpose of supplying said city with water, as in said alleged contract provided, or for any other purpose, or at all, the Crystal Springs Land and Water Company expended a large or other amount of money, or about three millions of dollars, or any other sum whatever, or that said Los Angeles City Water Company expended for all or any of said purposes, or any other purpose, or at all, a large or other amount of money, or three millions of dollars, or any other sum whatever, exceeding the sum of seventy-five thousand dollars; and this defendant alleges upon information and belief that all of the moneys, if any, which have been expended by the complainant-Los Angeles City Water Company and Crystal Springs Land and Water Company, or either of them, in or about any of the property and water works mentioned in said bill of complaint, or in or about
76 any water works, including water rights and waters and other property used for the purpose of supplying water to said city of Los Angeles and its inhabitants, have been fully paid out of the water rates derived by said Los Angeles City Water Company from the sale of water to the inhabitants of said city, and, in addition thereto, the stockholders of said Los Angeles City Water Company have received and divided among themselves from water rates derived from the sales of water to the inhabitants of said city immense sums of money, aggregating several millions of dollars, and that the income which will be received by said stockholders from the water rates collected by said Los Angeles City Water Company for supplying water to the inhabitants of said city, according to the rates fixed by the ordinance sought to be set aside in this suit, will be far in excess of the income derived from ordinary investments or from loans on mortgage security of an amount of money equal to the value of all property used by said Los Angeles City Water

Company in supplying water to said city of Los Angeles and its inhabitants.

9. This defendant alleges that it has no information upon the subject sufficient to enable it to answer the allegations of said bill in reference thereto, and it therefore denies that the complainants Los Angeles City Water Company and Crystal Springs Land and Water Company, or either of them, has contracted a bonded indebtedness of $409,000 or any other sum, or that to secure the payment of said indebtedness or any other indebtedness said companies or either of them did convey to the complainant S. G. Murphy the alleged properties and water rights mentioned in paragraph XVI of said bill, or any part thereof, to secure the payment of said alleged indebtedness or any other indebtedness to the holders of said alleged bonds, or otherwise, or that said S. G. Murphy still holds the said property or any part thereof under said alleged deed of trust to secure said alleged bonded indebtedness or
77 any other indebtedness mentioned in said paragraph, or any part thereof, or that said bonded indebtedness of said companies or of either of them, or any part thereof, is still outstanding or unpaid on said alleged deed of trust.

This defendant denies that in and by said pretended lease mentioned in paragraph XVI of said bill only twenty-five per cent. of the gross receipts from water rates *were* purported to be agreed to be paid to said Crystal Springs Land and Water Company, but alleges that forty per cent. of said gross receipts was in said pretended lease purported to be agreed to be paid by said Los Angeles City Water Company to said Crystal Springs Land and Water Company as rental for the use of the property pretended to be leased by said pretended lease.

This defendant denies that the complainant Los Angeles City Water Company has acquired the pretended contract rights mentioned in said paragraph XVI or since the 1st day of January, 1880, has been furnishing to said city for municipal and public uses ementioned in said paragraph or for any other municipal use or purpose the water alleged in said paragraph to have been furnished by said complainant to said city in pursuance of the alleged contract set forth in paragraph IV of said bill; but, on the contrary, this defendant alleges that this defendant has taken the said water so used by it for municipal purposes, mentioned in said paragraph, as water belonging to it and coming from said Los Angeles river; and this defendant alleges that said complainant, Los Angeles City Water Company, in the latter part of August, 1878, endeavored to force this defendant to pay for water taken by it from the hydrants erected by said company and used for sprinkling the streets of said city, but this defendant refused to pay the same on the ground that said water belonged to this defendant as part of the Los Angeles river, and that by the judgment of the district court in and for said county of Los Angeles and by the judgment of the supreme court of said State it was determined that said waters belonged to this defendant as part of the Los Angeles river, and that this defendant, as owner thereof, had
78 good right to take the same from the pipes of the complainant Los Angeles City Water Company for all municipal purposes,

and for this and no other reason the said complainant, Los Angeles City Water Company, has acquiesced in this defendant taking water from the pipes of said complainant for municipal purposes of said city; and this defendant further alleges that for several years past *past* the complainant Los Angeles City Water Company has been supplying water to the inhabitants of said city and to this defendant through water systems erected by various persons and corporations under licenses from this defendant, providing expressly that this defendant should have the uncontrolled and absolute right and power to regulate the water rates to be charged for water supplied to the inhabitants of said city through their said systems, and also that water should be furnished to this defendant from said systems for all municipal purposes free of charge; and this defendant denies that said complainant, Los Angeles City Water Company, has performed or is still performing all of the terms and conditions of the said pretended contract on its part to be performed.

10. This defendant denies that in the year 1870, or at any other time, commissioners or any commissioner was appointed by said city for the purpose of ascertaining or determining the amount of rates that were charged for furnishing water to the inhabitants of said city at the date of said pretended contract mentioned in paragraph IV of said bill, or any of said rates, or that after investigation or examination or otherwise said commissioners or committee or any of them reported, or said council accepted, the rates set forth in paragraph XVII of said bill or any of them as being the rates charged at the date of said pretended contract, or that said rates, alleged in said paragraph to have been ascertained and determined by said commissioners or any of them, were accepted by said city,
79 or that it was agreed between said city and said Los Angeles City Water Company that said rates or any other rates or any of them should be accepted as the minimum rates to be charged by said Los Angeles City Water Company under said pretended contract.

11. This defendant denies that the pretended contract mentioned in paragraph IV of said bill of complaint was ratified by the act of the legislature mentioned in paragraph XVIII of said bill or by any other act of the legislature, or at all.

This defendant alleges that the pretended act of the legislature mentioned in said paragraph XVIII, purporting to declare that the following acts and contracts and ordinances of the mayor and common council of the said city of Los Angeles were thereby ratified and confirmed, to wit, the contract and lease for the care and maintenance of the Los Angeles city water works, entered into and made between the mayor and common council of the city of Los Angeles, on the one part, and John S. Griffin, Prudent Beaudry, and Solomon Lazard on the other part, dated the 20th day of July, 1868, and also the ordinance confirmatory of the same, passed July 22nd, 1868, which contract and ordinance were recorded in the office of the county recorder of Los Angeles county, in Book 1 of Miscellaneous Records, at pages 428–431, and also two certain concessions from said corporation to William G. Dryden, his heirs and assigns,

concerning rights of way and water, and the ordinance authorizing the same, passed February 24th, 1857, and December 8th, 1857, respectively, and recorded in the aforesaid recorder's office, in Book 2 of Deeds, pages 453 and 449, respectively, and a certain conveyance to Hiram McLaughlin, his heirs and assigns, from said corporation, dated August 6th, 1858, and recorded in Book 4 of Deeds, pages 225–'6, and that said pretended act of the legislature did not purport to enact any other thing or matter whatsoever.

This defendant alleges that at the date of the passage and approval of said pretended act of the legislature and at the time the same was to take effect by its terms the said John S. Griffin,
80 Prudent Beaudry, and Solomon Lazard had not nor had any one of them any right, title, interest, or estate of, in, or to any of the property, rights, or privileges purported to be given, conceded, or conveyed or agreed to be given, conceded, or conveyed to said Griffin, Beaudry, and Lazard in and by said pretended contract set forth in paragraph IV of said bill; but, on the contrary, all of their right, title, interest, and estate of, in, and to all of the property, rights, and privileges purported to be given, conceded, or conveyed to them in and by said pretended contract had been previously, to wit, not later than the 12th day of June, 1869, conveyed by them to the complainant Los Angeles City Water Company and ever since that date up to the present time have been owned by said Los Angeles City Water Company.

This defendant alleges that at the time of the passage and approval of said pretended act of the legislature it was expressly provided by the constitution of the State of California that the legislature of said State should have no authority to create private corporations, but that the same should be formed under general laws which might be altered from time to time or repealed, and that it was the rule of decision of the supreme court of the State of California at the time of the passage and approval of said pretended act and ever since that any act of the legislature which had the effect of granting a special franchise to any private corporation was in violation of and contrary to said constitutional provision and was null and void; and this defendant alleges that said pretended act of the legislature, in so far as it purported to ratify or confirm the provisions of said pretended contract set forth in paragraph IV of said bill, purporting to prohibit the mayor and common council of the city of Los Angeles and its successors and the legislature of said State from establishing water rates to be charged by said Griffin, Beaudry, and Lazard and their assigns for water to be furnished to the inhabitants of said city of Los Angeles for domestic
81 purposes under said pretended contract below those then charged by said Griffin, Beaudry, and Lazard, was repugnant to and in violation of said constitutional provision and was null and void and of no effect.

And this defendant further alleges upon information and belief that it was the intention of the said Griffin, Beaudry, and Lazard, at the time of entering into said pretended contract set forth in said paragraph IV of said bill, to organize themselves and certain asso-

ciates who were then and there interested with them in procuring said contract into a private corporation under an act of the legislature of the State of California entitled "An act for the incorporation of water companies," approved April 22nd, 1858, and said Griffin, Beaudry, and Lazard and their said associates did shortly afterwards, on the 18th day of August, 1868, prepare, sign, and file with the county clerk of Los Angeles county, State aforesaid, a certificate of incorporation under said last-mentioned act of the legislature for the formation and incorporation of the complainant Los Angeles City Water Company, and that in and by said certificate of incorporation it was stated that the objects for which said corporation was formed were to supply the inhabitants of said city of Los Angeles with water for domestic purposes and to conduct the same into and distribute the same through the streets and alleys of said city by means of pipes, tubes, hydrants, flumes, ditches, wheels, reservoirs, pumps, and other machinery, said water to be taken from said Los Angeles river or the zanjas or branches thereof, or springs forming the same, or from such other source of supply as said corporation might find convenient and economical, and to make certain improvements, and to sell and distribute water to the inhabitants of said city for domestic purposes under the terms of said pretended contract, set forth in paragraph IV of said bill.

That thereafter, on the 26th day of August, 1868, said Los Angeles City Water Company was duly formed and incorporated under said certificate of incorporation and under said last-mentioned act of the legislature as a water company, and that the incorpora-
82 tors thereof were said Griffin, Beaudry, and Lazard and their said associates.

That, as this defendant is informed and believes, said pretended contract was procured by said Griffin, Beaudry, and Lazard and their said associates in trust for said water company, and to convey said pretended contract to said company as soon as it should be incorporated, and, in truth and fact, all of the conditions and covenants of said pretended contract contained on the part of said Griffin, Beaudry, and Lazard, which were in fact performed, were so performed by said Los Angeles City Water Company, and not by said Griffin, Beaudry, and Lazard, and said Griffin, Beaudry, and Lazard did not, nor did any of them, ever comply with any of the terms or conditions of said pretended contract, or do anything thereunder, but ever since the alleged execution of said pretended contract the complainant Los Angeles City Water Company has been in the sole and exclusive possession, management, and control of the water works purported in said pretended contract to be leased, and all of the rights, privileges, and property acquired by said Griffin, Beaudry, and Lazard under or by virtue of said pretended contract.

That in and by said statute approved April 22nd, 1858, it was provided that water rates to be collected by any corporation formed thereunder should be reasonable and should be determined by a board of commissioners, of whom two were to be selected by the city authorities of the city wherein such corporation furnished water

and two by the water company, and in case the four could not agree to the valuation, then all four of said commissioners were to choose a fifth person, and if they could not agree, such fifth commissioner was to be appointed by the sheriff of the county wherein such city was situated, and said commissioners so to be selected or appointed should determine the rates to be charged by said company for one year or until new rates should be established.

83 That at the time of the alleged execution of said pretended contract set forth in paragraph IV of said bill it was provided by an act of the legislature of the State of California, then in force, entitled "An act to provide for the incorporation of water companies," passed May 3rd, 1852, that no contract between any city of said State and any company organized to supply such city with water should take from such city the absolute and uncontrolled right to regulate the rates for water supplied to the inhabitants of such city.

That said Griffin, Beaudry, and Lazard and their said associates delayed making a formal conveyance to said complainant, Los Angeles City Water Company, until the 12th day of July, 1869, but, as hereinbefore alleged, said company acted as the owner of all of the rights, privileges, and property acquired by said Griffin, Beaudry, and Lazard under and by virtue of said pretended contract, and of all of the water works and other property used for the supplying of water to said city, from the time of the incorporation of said company up to said formal conveyance, in the same manner as it did subsequently to the execution of said conveyance.

This defendant has no information or belief upon the subject sufficient to enable it to answer the allegations of said bill in reference thereto, and it therefore denies that the rates set forth in paragraph XVII of said bill or any of them were agreed upon by the parties to said pretended contract as the rates charged at the time said pretended contract was made, or were the rates that were charged at the time of the execution of said pretended contract.

12. This defendant denies that this defendant has ever since the making of said pretended contract set forth in paragraph IV of said bill of complaint or at any other time recognized the existence of said pretended contract, or that said defendant has in every year or at any other time demanded of said complainant, Los Angeles City Water Company, the performance of the various terms

84 and conditions of said pretended contract on its part or any of them.

This defendant admits that the council of said city has from time to time requested said complainant to do various things agreed in said pretended contract by said Griffin, Beaudry, and Lazard to be done by them and their assigns, but denies that such request has been made in recognition of the validity of said pretended contract, but, on the contrary, alleges that said complainant, Los Angeles City Water Company, ever since its said incorporation, has been in possession of the water works of this defendant mentioned in said pretended contract and has been making use of the streets and public ways of said city and the lands of said defendant for the

purpose of constructing reservoirs and other works and laying pipes for the supplying of water to the inhabitants of said city, and has during all that time used large quantities of waters of said Los Angeles river, the property of said defendant, for that purpose, and said defendant has merely acquiesced in said complainant, Los Angeles City Water Company, supplying water to the inhabitants of said city during said period as being a tenant at will of said defendant, which tenancy was torminable at any time at the option of said defendant, and up to the 20th day of October, 1896, consented to the taking of the waters of said river by said complainant, and the benefits, advantages, and emoluments gained and received by said complainant, without taking into consideration the waters of said river so used by said complainant, as aforesaid, during the whole of said period up to the present time, have afforded an immense and generous and more than reasonable remuneration and compensation to said complainant and its stockholders for all the services which it has performed in doing the acts mentioned in paragraph XIX of said bill, and that the income derived by said complainant and its stockholders from the water rates received by it during said period for supplying the inhabitants of said city with water has
85 always been far in excess of the reasonable interest upon the investment of said complainant in all of the property used by it in so supplying water to said inhabitants.

This defendant denies that said complainant, Los Angeles City Water Company, during all of the time mentioned in said paragraph XIX or during or at any other time, furnished water for sprinkling the streets of said city and for all the public uses and purposes mentioned in said paragraph, or any of them, in accordance with said pretended contract and not otherwise, or that this defendant has been accepting said waters alleged in said paragraph to have been provided and furnished by said Los Angeles City Water Company for said purposes, as furnished or provided under said contract; but, on the contrary, this defendant alleges that this defendant has, during all of said time, taken all of the water furnished or provided to it by said Los Angeles City Water Company free of charge, as water belonging to said defendant, and taken from said Los Angeles river, and which the Los Angeles City Water Company had no right to sell or dispose of to others, as determined by the decision of the supreme court of the State of California hereinbefore referred to.

This defendant alleges that said complainant, Los Angeles City Water Company, ever since its incorporation, has continuously taken the water from said Los Angeles river, belonging to this defendant, varying in quantity from a few inches, measured under a four-inch pressure in the beginning, and gradually increasing in amount until the same amounted to several hundred inches, measured under a four-inch pressure, and that shortly before the 20th day of October, 1896, said defendant notified said complainant not to take any more water from said river in excess of the ten inches mentioned in said pretended contract; but, notwithstanding said notice, and without the consent, previous or otherwise, of said de-

fendant, said complainant, Los Angeles City Water Company, has ever since said last-mentioned date continuously taken from
86 said Los Angeles river a large quantity of water thereof belonging to said defendant, amounting to several hundred inches, measured under a four-inch pressure, in utter disregard and willful violation of the provisions of said pretended contract, wherein said Griffen, Beaudry, and Lazard did, for themselves and assigns, purport to covenant not to take any water from said river in excess of ten inches without the previous consent of the predecessor of said defendant, the mayor and common council of the city of Los Angeles.

This defendant denies that it or any of its predecessors, or said mayor and common council of the city of Los Angeles, ever recognized any contract obligation of said Los Angeles City Water Company to do or perform all thi things purported to be agreed to be performed by said Griffen, Beaudry, and Lazard and their associates, or any of said things under said pretended contract, or has recognized or insisted upon the right of said city of Los Angeles to receive the benefits of said pretended contract or all or any of the benefits provided for in said pretended contract; but this defendant alleges that all of the things which this defendant has ever required of said Los Angeles City Water Company were demanded by said defendant as from a tenant at will who was obligated to do anything which said defendant might require, or in default thereof to abstain from using any of the property of said defendant or exercising any franchise in said city.

13. This defendant denies that under or by virtue of said pretended contract set forth in paragraph IV of said bill said complainant, Los Angeles City Water Company, is obligated to lay pipes or supply water to the inhabitants living in any territory which was not at the date of said pretended contract included within the territorial limits of said municipal corporation, known at that time as the mayor and common council of the city of Los An eles, and this defendant alleges that the territory then included in said territorial limits is only a small portion of the present territory included within the present limits of said city.

87 14. This defendant alleges upon information and belief that said pretended contract was procured by said Griffen, Beaudry, and Lazard for the benefit and use of said complainant, Los Angeles City Water Company, and that at the time of the incorporation of said complainant and at the time of the formal assignment of said pretended contract to it, as hereinbefore alleged, the laws of the State of California expressly provided that it should be competent to amend or modify in any respect whatever or utterly repeal the charter and all laws under which said complainant was incorporated, and that the law-making power of said State, ever since the incorporation of said complainant, had full authority to enact the provisions of the constitution of said State set forth in paragraph XXI of said bill, and to enact the statute set forth in paragraph XXII of said bill, and also to enact the provisions of the charter of this defendant set forth in paragraph XXIII of said bill, and that

all of said constitutional provisions, statutes, and charter have ever since their enactment respectively applied to and bound in every respect said complainant and the other complainants herein.

15. This defendant denies that said provisions of the constitution of the State of California set forth in paragraph XXI of said bill of complaint or any of them impair the alleged obligation of said pretended contract set forth in paragraph IV of said bill or any contract with said Los Angeles City Water Company, or are in violation of the provisions of the Constitution of the United States prohibiting any State from passing any law impairing the obligation of any contracts, or any other provision of the Constitution of the United States, or that said provisions of said constitution or the acts of the legislature mentioned in paragraph XXV of said bill are, or any one of them is, in violation of the said provision of the Constitution of the United States or in violation of amendment XIV to the Constitution of the United States, prohibiting any State from
88 depriving any person of life, liberty, or property without due process of law and prohibiting the said State from denying to any person within their jurisdiction equal protection of the laws, or of any other provision of the Constitution of the United States.

This defendant denies that the attempt in the constitution of the State of California and the acts of the legislature mentioned in paragraph XXV of said bill to create a condition in the estate of said Los Angeles City Water Company in its alleged property mentioned in said paragraph, whereby said title is to be defeated, is an attempt to deprive said Los Angeles City Water Company of its property without due process of law.

16. This defendant denies upon information and belief that under the provisions of the ordinance set forth in paragraph XXVI of said bill, at the rates therein fixed, the revenues of said Los Angles City Water Company would be reduced more than forty per cent. or any per cent. or at all below an amount which it would receive at the rates alleged in said paragraph to have been charged in 1868 for the same services; but, on the contrary, this defendant alleges upon information and belief that said company would not have charged any higher rates than those fixed in said ordinance had not the same been enacted, as said last-mentioned rates were more than a full, fair, and reasonable compensation for the services performed, and said complainant, Los Angeles City Water Company, would not have charged higher rates for fear of inviting other persons and corporations into competition with them in supplying water to the inhabitants of said city.

This defendant alleges that in truth and fact said complainant voluntarily and prior to the year 1880 reduced rates for water supplied by it to the inhabitants of said city of Los Angeles far below those set forth in paragraph XVII of said *bi* bill, and that ever since and including the year 1880 up to and including the year 1895 the council of said city has yearly, and with the acquiescence and consent of said complainant, Los Angeles City Water Company, and acting in pursuance of the constitutional pro-
89 visions, statutes, and charter set forth in paragraphs XXI, XXII, and XXIII of said bill established and fixed the

water rates to be charged by said complainant for water furnished to the inhabitants of said city of Los Angeles far below those set forth in said paragraph XVII of said bill, and that in truth and fact said provisions of said pretended contract purporting to prohibit said mayor and council from reducing the water rates to be charged by said Griffen, Beaudry, and Lazard under said pretended contract were in consideration of many advantages and benefits received from this defendant and its predecessor by said Los Angeles City Water Company, waived and abandoned by said Los Angeles City Water Company many years prior to the passage of said ordinance set forth in paragraph XXVI of said bill, and said provisions of said pretended contract have never been observed or carried into effect or recognized by this defendant or said Los Angeles City Water Company since the year 1879.

And this defendant on information and belief denies that under the provisions of said last-mentioned ordinance the ability of said Los Angeles City Water Company to make the necessary extensions and construct the necessary improvements to meet the wants and keep up with the progress of said Los Angeles city will be greatly or at all impaired, or that the amount of the rent which said Crystal Springs Land and Water Company would receive will be forty per cent. less than it is entitled to receive, or that the ability of said Los Angeles City Water Company to pay its interest upon outstanding bonds, or to maintain the operating expenses or repairs or improvements necessary for the proper administration of any system, or to comply with said pretended contract set forth in paragraph IV of said bill will be greatly or at all impaired, or that said Los Angeles City Water Company or said Crystal Springs Land and Water Company will be deprived of any revenues which it ought to receive, or will be unable in any respect to carry on its business or any business or to properly perform said pretended con-
90 tract; but, on the contrary, this defendant alleges on information and belief that said Los Angeles City Water Company would not and could not have collected any greater rates for water supplied by it to the inhabitants of said city of Los Angeles than those set forth in said ordinance mentioned in paragraph XXVI of said bill had said ordinance not been passed.

17. This defendant denies that if said Los Angeles City Water Company should attempt to take more than the rates fixed in said last-mentioned ordinance this defendant would claim that the property of said Los Angeles City Water Company was forfeited to said defendant or would attempt to enforce such forfeiture.

This defendant denies that the complainants or any of them cannot maintain all rights which they might possess under the several pretended contracts set forth in said bill except at the peril of the loss of their property mentioned in paragraph XVII of said bill, or any other property, or at the peril of the certainty of their being greatly or otherwise interfered with by said city of Los Angeles in their attempts to maintain or operate said property.

18. This defendant denies upon information and belief that the matter in dispute in this suit exceeds, exclusive of interest and

costs, or otherwise, the sum or value of $150,000 or any other sum or value, but, on the contrary, this defendant alleges upon information and belief that said complainants do not in good faith contest said ordinance set forth in paragraph XXVI of said bill, and do not in good faith contend that the rates therein fixed are not reasonable and fair, or that said rates are below those which would have been charged by said Los Angeles City Water Company of its own motion, and that the sole and only object of complainants in bringing this suit is to endeavor to have the question of the title to the alleged percolating waters mentioned in said bill tried in this court, under the guise and pretense that said complainants are endeavoring to contest said last-mentioned ordinance and in order to
91 attempt to confer jurisdiction on this court by raising questions in regard to the invalidity of said last-mentioned ordinance as being repugnant to the Constitution of the United States.

Wherefore this defendant, having shown to this court by this answer that it has no jurisdiction of this cause, prays that said bill of complaint be dismissed for want of such jurisdiction, and having thus made answer fully to said bill, this defendant prays to be hence dismissed with costs.

W. E. DUNN,
City Attorney.
LEE & SCOTT,
Solicitors for said Defendant.

STATE OF CALIFORNIA,
County of Los Angeles, } ss:

W. E. Dunn, being duly sworn, says that he is the city attorney of the defendant City of Los Angeles, named in the foregoing answer; that the same is true of his own knowledge, except as to the matters which are therein stated on his information or belief, and as to those matters that he believes it to be true.

W. E. DUNN.

Subscribed and sworn to before me this 7 day of Sept., A. D. 1897.

[SEAL.] ROBERT A. TODD,
Notary Public in and for the County of Los Angeles, State of California.

(Endorsed:) No. 734. U. S. circuit court, so. dist. of California. Los Angeles City Water Co. *et al.*, compl'ts, *vs.* City of Los Angeles *et al.*, def'ts. Answer of City of Los Angeles. Received copy of within answer this 7th day of Sept'r, 1897. White & Monroe and J. S. Chapman, sol'rs for complainants. Filed Sep. 7, 1897. Wm. M. Van Dyke, clerk. W. E. Dunn & Lee & Scott, rooms 411–414, Bullard block, Los Angeles, California, sol'rs for def't.

92 In the Circuit Court of the United States, Ninth Circuit, for the Southern District of California.

LOS ANGELES CITY WATER COMPANY ET AL., Complainants,
vs.
THE CITY OF LOS ANGELES ET AL., Defendants.

The answer of Hermann Silver, Z. D. Matthus, L. M. Grider, E. L. Blanchard, C. H. Toll, James Ashman, E. L. Hutchison, F. M. Nickell, and F. L. Baker, composing the council of the city of Los Angeles, nine of the defendants, to the bill of complaint of The Los Angeles City Water Company, Crystal Springs Land and Water Company, and S. G. Murphy, complainants.

These defendants, now and at all times hereafter, saving and reserving unto themselves all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainants' said bill of complaint contained, and of the exceptions heretofore taken by these defendants to said bill of complaint, and of the demurrer heretofore interposed by them to said bill of complaint, for answer thereto or unto so much thereof and such parts as these defendants are advised is or are material or necessary for them to make answer unto, these defendants, for answering, say:

1. These defendants deny that on or about the 22nd day of July, 1868, or at any other time the defendant The City of Los Angeles or the mayor and common council of the city of Los Angeles, named in said bill of complaint, or any predecessor of the defendant The City of Los Angeles entered into the written contract, a copy whereof is set forth in paragraph IV of said bill of complaint, or any other contract whereby the defendant The City of Los Angeles or said mayor and common council of the city of Los Angeles or any predecessor of the defendant The City of Los Angeles

93 agreed with J. S. Griffin, P. Beaudry, and Solomon Lazard, named in said bill of complaint, or any one or more — them, that the water rates to be charged by said Griffin, Beaudry, and Lazard, or any one or more of them, or any other person, should not exceed a certain amount, or by which the defendant The City of Los Angeles or said mayor and common council of the city of Los Angeles or any predecessor of the defendant The City of Los Angeles agreed that the legislature of this State or the defendant City of Los Angeles or any predecessor of the defendant City of Los Angeles should not have the absolute and uncontrolled right to fix and establish water rates to be charged by said Griffin, Beaudry, and Lazard, or any one or more of them, or any other person or corporation, for supplying water to said city or its inhabitants.

And these defendants allege that at the time of the alleged execution of said pretended contract set forth in paragraph IV of said bill of complaint the laws of the State of California prohibited any municipal corporation from entering into any contract with any person or corporation, whereby such municipal corporation or the

legislature of this State might be deprived of the absolute and uncontrolled right and power to establish and fix water rates to be charged by any person or corporation supplying water to such municipal corporation or its inhabitants, and that said mayor and common council of the city of Los Angeles had no power or authority to enter into said pretended contract set forth in paragraph IV of said bill of complaint, so far as it purports to restrict the uncontrolled and absolute right and power of said mayor and common council and its successors and the legislature of the State of California in fixing and establishing the water rates to be charged by said Griffin, Beaudry, and Lazard, and their assigns for water to be supplied by them to the inhabitants of said city of Los Angeles.

94 2. These defendants admit that said pretended contract set forth in paragraph IV of said bill of complaint was assigned by said Griffin, Beaudry, and Lazard to the complainant Los Angeles City Water Company, and these defendants allege that said assignment was made not later than the 12th day of June, 1869.

3. These defendants upon information and belief deny that the said Griffin, Beaudry, and Lazard and the complainant Los Angeles City Water Company, or any one or more of them, have performed all of the terms and conditions of said pretended contract set forth in said paragraph IV of said bill of complaint on their part to be performed, and these defendants allege that said complainant, Los Angeles City Water Company has, among other violations and breaches of said pretended contract, ever since the 20th day of October, 1896, without the consent of the defendant City of Los Angeles or of said mayor and common council of the city of Los Angeles, and in violation of said pretended contract, continuously taken from the Los Angeles river mentioned in said bill of complaint, for the use of the water works also mentioned in said bill, more than the quantity of ten inches of water measured under a four-inch pressure, to wit, several hundred inches, measured under a four-inch pressure, and continuously appropriated and converted the same to the use and benefit of said complainant, Los Angeles City Water Company, and deprived the defendant City of Los Angeles of the same, to its great damage.

4. These defendants have no information upon the subject sufficient to enable them to answer the allegations of said bill of complaint in reference thereto, and they therefore deny that in order to perform the pretended contract mentioned in paragraph IV of said bill on the part of said Los Angeles City Water Company, or to extend the iron pipes provided for in said pretended contract as fast as the people of said Los Angeles city desired to be supplied with water for domestic purposes and would agree to take sufficient water to pay ten per cent. per annum interest upon the cost of ex-

95 tending said pipes through the streets which were at that time unsupplied with water, or to obtain a supply of water over and above the said ten inches mentioned in said pretended contract, or for any other purpose or purposes, the complainant Los Angeles City Water Company has been compelled to spend a large

amount of money, to wit, more than two millions of dollars or any other sum of money in excess of seventy-five thousand dollars, in laying down pipes in the streets of said city to furnish the inhabitants thereof with water, or to furnish water for the public schools, city hospitals, or jails, as in said pretended contract provided, or otherwise, or that said complainant, Los Angeles City Water Company, has laid down over and above the 12 miles of water pipe which they had purported in said pretended contract to agree to lay down about 300 miles of water pipe or any other quantity of water pipe in excess of ten miles, to be used or now used for the purpose of furnishing said city and its inhabitants with water in compliance with the terms and conditions of said pretended contract or for any other purpose or purposes or at all.

5. These defendants on information and belief deny that the points from which water *eas* to be taken by said complainant, Los Angeles City Water Company, to supply the inhabitants of said city with water were at such elevations that it was impossible to take the water to those portions of said city, which in the last 12 or 14 years *years* have grown *yp* in the general prosperity of the city. These defendants have no information upon the subject sufficient to enable them to answer the allegations of said bill in reference thereto, and they therefore deny that the complainant Los Angeles City Water Company has, at an immense or other outlay of money or otherwise, purchased the system that was established by Prudent Beaudry, and known as the Beaudry system of water works, or the system established by the East Side Springs Water Company, or has purchased or now owns or holds certain water rights in the Arroyo Seco, mentioned in paragraph X of said bill of complaint, or is taking water from the said Arroyo Seco into said city
96 on the eastern side of the Los Angeles river or elsewhere for the supply of the inhabitants of that portion of the city or elsewhere, or that said systems of works and said water rights or any of them or any part thereof *is* now being used or operated by said Los Angeles City Water Company for the purpose of furnishing the city of Los Angeles and the inhabitants thereof with water under or in pursuance of said pretended contract mentioned in paragraph IV of said bill or for any other purpose or at all.

6. These defendants have no information upon the subject sufficient to enable them to answer the allegations of said bill of complaint in reference thereto, and they therefore deny that the complainant Los Angeles City Water Company purchased of Charles V. Howard, named in paragraph XIII of said bill, a portion of Los Felis rancho, known as Crystal Springs tract, or any part thereof, or any other land, or that said Charles V. Howard had prior to the year 1869 or at any other time acquired the title to said Los Felis rancho, or any part thereof, embracing said Crystal Springs tract, or any part thereof, under the patent from the United States or otherwise, or that subsequently or at any other time said Crystal Springs tract, or any part thereof, was conveyed by said Los Angeles City Water Company or at all to the Crystal Springs Land and Water Company, or that said Crystal Springs Land and Water Company

acquired by purchase from the owners of the remainder of the Los Felis rancho and from the owners of portions of the San Rafael rancho or at all the right to enter upon the said lands parts of the Los Felis and San Rafael ranchos, or any part thereof, to develop or collect together the waters percolating in the soil upon said ranchos, or any part thereof, within the tracts where the rights of development and collection and diversion *is* alleged in said paragraph XIII to have been acquired or elsewhere, or that said Crystal Springs Land and Water Company did at an enormous or other expense or at all make excavations or any excavation or lay pipes or any
97 pipe within the portions of the said Los Felis and San Rafael ranchos mentioned in said bill or elsewhere.

These defendants deny on information and belief that the complainant Crystal Springs Land and Water Company did develop of the percolating waters in the soil mentioned in paragraph XIII of said bill of complaint about 700 inches of water under a four-inch pressure, or any other amount of water, or that said waters alleged in said paragraph to have been developed by said Crystal Springs Land and Water Company or any part thereof was conducted by said Crystal Springs Land and Water Company, under or by virtue of the pretended rights alleged in said paragraph to have been acquired from the owners of said lands or otherwise, to a point to connect the conduits with the system of water works owned by the complainant Los Angeles City Water Company, or elsewhere, or that said Crystal Springs Land and Water Company by the grants from the owners of the portions of said Ranchos Los Felis and San Rafael, where said developments are alleged in said paragraph XIII to have been made or otherwise, became vested with the right to make such excavations or excavation or any other excavation, or to own, take, divert, or use the waters which said Crystal Springs Land and Water Company might by the alleged works mentioned in said paragraph develop or by said pipes or any pipe or pipes divert.

These defendants upon information and belief deny that the complainant Crystal Springs Land and Water Company did acquire the waters mentioned in said paragraph XIII, or any part thereof, or the right to the use or disposition thereof, or did lease to the complainant Los Angeles City Water Company the said 700 inches of water mentioned in said paragraph, or any part thereof, or the right to take the same through the system of works alleged in said paragraph to be owned by said complainant, Los Angeles City Water Company, or through any other system, or to conduct the same or any part thereof into said Los Angeles city to supply said city or the inhabitants thereof with water for domestic purposes or for any other purposes or at all.

98 These defendants admit that on the 13th day of December, 1886, the complainant Los Angeles City Water Company made a pretended deed of conveyance to said complainant, Crystal Springs Land and Water Company, whereby said Los Angeles City Water Company did purport to convey, without consideration, certain pretended water rights, lands, and water works, and also that

on the 30th day of December, 1886, said complainant, Crystal Springs Land and Water Company, made a pretended lease to the complainant Los Angeles City Water Company, purporting to lease to said Los Angeles City Water Company all of the property so purported to have been conveyed to said Crystal Springs Land and Water Company by said last-mentioned deed of conveyance, as aforesaid, upon the terms that ssaid Los Angeles City Water Company would pay to said Crystal Springs Land and Water Company monthly 40 per cent. of the gross earnings and receipts realized by said Los Angeles City Water Company from the sale of water during the term of said pretended lease, to wit, eleven years from January 1st, 1887; but these defendants allege upon information and belief that said Crystal Springs Land and Water Company was organized and incorporated in the month of November, 1886, by all of the then stockholders of the complainant Los Angeles City Water Company, and that all of the capital stock of said Crystal Springs Land and Water Company was, upon its incorporation, subscribed and taken by said stockholders of said Los Angeles City Water Company in the same proportion in which said stockholders then held the capital stock of said Los Angeles City Water Company, and that the capital stock of said Crystal Springs Land and Water Company has ever since been held by all of the stockholders of said Los Angeles City Water Company in the same proportion in which they have held the capital stock of said Los Angeles City Water Company, and that at the time of the execution of said last-mentioned pretended deed of conveyance and at the time of the execution of said last-mentioned pretended lease all of the stockholders of said Los Angeles City Water Company were and composed all of the stockholders of said Crystal
99 Springs Land and Water Company, and said stockholders of said Los Angeles City Water Company then held and owned all of the stock of said Crystal Springs Land and Water Company in the same proportions in which they then held and owned the capital stock of said Los Angeles City Water Company, and that both of said companies were at the time of the incorporation of said Crystal Springs Land and Water Company and ever since have been practically one company and controlled by the same stockholders and officers, and that the pretended incorporation of said Crystal Springs Land and Water Company was simulated and noeffected in good faith, and was procured by the stockholders of said Los Angeles City Water Company for the purpose of making it the apparent owner of all of the property and rights of said Los Angeles City Water Company outside of the said city of Los Angeles and in order to pretend that said Los Angeles City Water Company was incurring an expense for the rental of the water and other property used by it in supplying water to the city of Los Angeles and its inhabitants; and these defendants allege on information and *d*elief that in truth and fact said Los Angeles City Water Company never paid and has never been under any obligation to pay to any person or corporation other than said defendant city any rental for the use of any water furnished to the city of Los Angeles or its inhabitants,

but all of the pretended rental mentioned in said pretended lease has always been divided among all of the stockholders of said complainant, Los Angeles City Water Company, in proportion to the amount of capital stock in said company held by them respectively.

7. These defendants deny that at the time mentioned in paragraph XIV of said bill of complaint or at any other time the acquisition of a further water supply was necessary to enable the complainant Los Angeles City Water Company to perform the pretended contract mentioned in said paragraph or to supply the inhabitants of
100 the city of Los Angeles with water, but, on the contrary, these defendants allege that said defendant city was always ready, able, and willing to furnis- a full and adequate supply of water for all of the purposes needed by said complain-t, and especially sufficient water f- the Los Angeles river, mentioned in the pretended contract — forth in paragraph IV of said bill, to supply said city an- — inhabitants with water for domestic use and all other pur- for a reasonable charge and price, not exceeding that which said Los Angeles City Water Company pretended to contract to pay said Crystal Springs Land and Water Company in and by said simulated lease mentioned in paragraph VIII of said bill.

8. That these defendants have no information upon the subject sufficient to enable them to answer the allegations of the bill of complaint in reference thereto, and they therefore deny that in the acquisition of the alleged water rights mentioned in paragraph XV of said bill, or in the alleged development or collection of the alleged percolating water mentioned in said paragraph, or in the construction of the pipes to carry said waters, or in the purchase or laying of the water pipes throughout the city of Los Angeles mentioned in said paragraph for the purpose of supplying said city with water, as in said alleged contract provided, or for any other purpose or at all the Crystal Springs Land and Water Company expended a large or other amount of money or about three millions of dollars or any other sum whatever, or that said Los Angeles City Water Company expended for all or any of said purposes or any other purpose or at all a large or other amount of money or three millions of dollars or any other sum whatever exceeding the sum of seventy-five thousand dollars; and these defendants allege upon information and belief that all of the moneys, if any, which have been expended by the complainant Los Angeles City Water Company and Crystal Springs Land and Water Company or either of them in or about any of the property and water works mentioned in said
101 bill of complaint or in or about any water works, including water rights and waters and other property used for the purpose of supplying water to said city of Los Angeles and its inhabitants, have been fully paid out of the water rates derived by said Los Angeles City Water Company from the sale of water to the inhabitants of said city, and in addition thereto the stockholders of said Los Angeles City Water Company have received and divided among themselves, from water rates derived from the sales of water to the inhabitants of said city, immense sums of money, aggregating several millions of dollars, and that the income which will be received

by said stockholders from the water rates collected by said Los Angeles City Water Company for supplying water to the inhabitants of said city, according to the rates fixed by the ordinance sought to be set aside in this suit, will be far in excess of the income derived from ordinary investments or from loans on mortgage security of an amount of money equal to the value of all property used by said Los Angeles City Water Company in supplying water to said city of Los Angeles and its inhabitants.

9. These defendants allege that they have no information upon the subject sufficient to enable them to answer the allegations of said bill in reference thereto, and they therefore deny that the complainants Los Angeles City Water Company and Crystal Springs Land and Water Company or either of them has contracted a bonded indebtedness of $409,000 or any other sum, or that to secure the payment of said indebtedness or any other indebtedness said companies or either of them did convey to the complainant S. G. Murphy the alleged properties and water rights mentioned in paragraph XVI of said bill, or any part thereof, to secure the payment of said alleged indebtedness or any other indebtedness to the holders of said alleged bonds or otherwise, or that said S. G. Murphy still holds the said property or any part thereof under said alleged deed of trust to secure said alleged bonded indebtedness, or any other indebtedness mentioned in said paragraph, or any part
102 thereof, or that said bonded indebtedness of said companies or of either of them or any part thereof is still outstanding or unpaid on said alleged deed of trust.

These defendants deny that in and by said pretended lease mentioned in paragraph XVI of said bill only twenty-five per cent. of the gross receipts from water rates were purported to be agreed to be paid to said Crystal Springs Land and Water Company, but alleges that forty per cent. of said gross receipts was in said pretended lease purported to be agreed to be paid by said Los Angeles City Water Company to said Crystal Springs Land and Water Company as rental for the use of the property pretended to be leased by said pretended lease.

These defendants deny that the complainant Los Angeles City Water Company has acquired the pretended contract rights mentioned in said paragraph XVI, or since the 1st day of January, 1880, has been furnishing to said city, for municipal and public uses ementioned in said paragraph, or for any other municipal use or purpose, the water alleged in said paragraph to have been furnished by said complainant to said city in pursuance of the alleged contract set forth in paragraph IV of said bill; but, on the contrary, these defendants allege that said defendant city has taken the said water so used by it for municipal purposes mentioned in said paragraph as water belonging to it and coming from said Los Angeles river; and these defendants allege that said complainant, Los Angeles City Water Company, in the latter part of August, 1878, endeavored to force the defendant City of Los Angeles to pay for water taken by it from the hydrants erected by said company and used for sprinkling the streets of said city, but the defendant City of Los

Angeles refused to pay the same, on the ground that said water belonged to said defendant city as part of the Los Angeles river, and that by the judgment of the district court in and for said county of Los Angeles and by the judgment of the supreme court of said State it was determined that said waters belonged to the defendant City of Los Angeles as part of the Los
103 Angeles river, and that the defendant City of Los Angeles, as owner thereof, had good right to take the same from the pipes of the complainant Los Angeles City Water Company for all municipal purposes, and for this and no other reason the said complainant, Los Angeles City Water Company, has acquiesced in the defendant City of Los Angeles taking water from the pipes of said complainant for municipal purposes of said city; and these defendants further allege that for several years last past the complainant Los Angeles City Water Company has been supplying water to the inhabitants of said city and to said defendant city through water systems erected by various persons and corporations under licenses from said defendant city providing expressly that the defendant City of Los Angeles should have the uncontrolled and absolute right and power to regulate the water rates to be charged for water supplied to the inhabitants of said city through their said systems, and also that water should be furnished to said defendants city from said systems for all municipal purposes free of charge; and these defendants deny that said complainant, Los Angeles City Water Company, has performed or is still performing all of the terms and conditions of said pretended contract on its part to be performed.

10. These defendants deny that in the year 1870 or at any other time commissioners or any commissioner was appointed by said city for the purpose of ascertaining or determining the amount of rates that were charged for furnishing water to the inhabitants of said city at the date of said pretended contract mentioned in paragraph IV of said bill, or any of said rates, or that after investigation or examination or otherwise said commissioners or committee or any of them reported or said council accepted the rates set forth in paragraph XVII of said bill or any of them as being the rates charged at the date of said pretended contract, or that said rates alleged in said paragraph to have been ascertained and determined by said commissioners or any of them were accepted by said city, or that it was agreed between said city and said Los Angeles City Water Company that said rates or any other rates or any of them should be accepted as the minimum rates to be charged by said Los Angeles City Water Company under said pretended contract.

104 11. These defendants deny that the pretended contract mentioned in paragraph IV of said bill of complaint was ratified by the act of the legislature mentioned in said paragraph XVIII of said bill or by any other act of the legislature or at all.

These defendants allege that the pretended act of the legislature mentioned in said paragraph XVIII, purporting to declare that the following acts and contracts and ordinances of the mayor and common council of the said city of Los Angeles were thereby ratified and confirmed, to wit, the contract and lease for the care and main-

tenance of the Los Angeles City water works, entered into and made between the mayor and common council of the city of Los Angeles, on the one part, and John S. Griffin, Prudent Beaudry, and Solomon Lazard, on the other part, dated the 20th day of July, 1868, and also the ordinance confirmatory of the same, passed July 22nd, 1868, which contract and ordinance were recorded in the office of the county recorder of Los Angeles county, in Book 1 of Miscellaneous Records, at pages 428–431, and also two certain concessions from said corporation to William G. Dryden, his heirs and assigns, concerning rights of way and water, and the ordinance authorizing the same, passed February 24th, 1857, and December 8th, 1857, respectively, and recorded in the aforesaid recorder's office, in Book 2 of Deeds, pages 453 and 449 respectively, and a certain conveyance to to Hiram McLaughlin, his heirs and assigns, from said corporation, dated August 6th, 1858, and recorded in Book 4 of Deeds, pages 225, '6, and that said pretended act of the legislature did not purport to enact any other thing or matter whatsoever.

These defendants allege that at the date of the passage and approval of said pretended act of the legislature, and at the time the same was to take effect by its terms, the said John S. Griffin, Prudent Beaudry, and Solomon Lazard had not, nor had any one of them, any right, title, interest, or estate of, in, or to any of the
105 property, rights, or privileges purported to be given, conceded, or conveyed or agreed to be given, conceded, or conveyed to said Griffin, Beaudry, and Lazard in and by said pretended contract set forth in paragraph IV of said bill; but, on the contrary, all of their right, title, interest, and estate of, in, and to all of the property, rights, and privileges purported to be given, conceded, or conveyed to them in and by said pretended contract had been previously, to wit, not later than the 12th day of June, 1869, conveyed by them to the complainant Los Angeles City Water Company and ever since that date up to the present time have been owned by said Los Angeles City Water Company.

These defendants allege that at the time of the passage and approval of said pretended act of the legislature it was expressly provided by the constitution of the State of California that the legislature of said State should have no authority to create private corporations, but that the same should be formed under general laws, which might be altered from time to time or repealed, and that it was the rule of decision of the supreme court of the State of California at the time of the passage and approval of said pretended act and ever since that any act of the legislature which had the effect of granting a special franchise to any private corporation was in violation of and contrary to said constitutional provision and was null and void; and these defendants allege that said pretended act of the legislature, in so far as it purported to ratify or confirm the provisions of said pretended contract set forth in paragraph IV of said bill, purporting to prohibit the mayor and common council of the city of Los Angeles and its successors and the legislature of said State from establishing water rates to be charged by said Griffin, Beaudry, and Lazard and their assigns for water to be furnished

to the inhabitants of said city of Los Angeles for domestic purposes under said pretended contract below those then charged by said Griffin, Beaudry, and Lazard, was repugnant to and in violation of said constitutional provision and was null and void and of no effect.

106 And these defendants further allege upon information and belief that it was the intention of the said Griffin, Beaudry, and Lazard at the time of entering into said pretended contract set forth in said paragraph IV of said bill to organize themselves and certain associates who were then and there interested with them in procuring said contract into a private corporation under an act of the legislature of the State of California entitled "An act for the incorporation of water companies," approved April 22nd, 1858, and said Griffin, Beaudry, and Lazard and their said associates did shortly afterwards, on the 18th day of August, 1868, prepare, sign, and file with the county clerk of Los Angeles county, State aforesaid, a certificate of incorporation under said last-mentioned act of the legislature for the formation and incorporation of the complainant Los Angeles City Water Company, and that in and by said certificate of incorporation it was stated that the objects for which said corporation was formed were to supply the inhabitants of said city of Los Angeles with water for domestic purposes, and to conduct the same into and distribute the same through the streets and alleys of said city by means of pipes, tubes, hydrants, flumes, ditches, wheels, reservoirs, pumps, and other machinery, said water to be taken from said Los Angeles river or the zanjas or branches thereof or springs forming the same, or from such other source of supply as said corporation might find convenient and economical, and to make certain improvements and to sell and distribute water to the inhabitants of said city for domestic purposes under the terms of said pretended contract set forth in paragraph IV of said bill.

That thereafter, on the 26th day of August, 1868, said Los Angeles City Water Company was duly formed and incorporated under said certificate of incorporation and under said last-mentioned act of the legislature as a water company, and that the incorporators thereof were said Griffin, Beaudry, and Lazard and their said associates.

107 That, as these defendants are informed and believe, said pretended contract was procured by said Griffin, Beaudry, and Lazard and their said associates in trust for said water company, and to convey said pretended contract to said company as soon as it should be incorporated, and, in truth and fact, all of the conditions and covenants of said pretended contract contained on the part of said Griffin, Beaudry, and Lazard, which were in fact performed, were so performed by said Los Angeles City Water Company, and not by said Griffin, Beaudry, and Lazard, and said Griffin, Beaudry, and Lazard did not, nor did any of them, ever comply with any of the terms or conditions of said pretended contract, or do anything thereunder, but ever since the alleged execution of said pretended contract the complainant Los Angeles City Water Company has been in the sole and exclusive possession, manage-

ment, and control of the water works purported in said pretended contract to be leased, and all of the rights, privileges, and property acquired by said Griffin, Beaudry, and Lazard under or by virtue of said pretended contract.

That in and by said statute approved April 22nd, 1858, it was provided that water rates to be collected by any corporation formed thereunder should be reasonable and should be determined by a board of commissioners, of whom two were to be selected by the city authorities of the city wherein such corporation furnished water and two by the water company, and in case the four could not agree to the valuation, then all four of said commissioners were to choose a fifth person, and if they could not agree, such fifth commissioner was to be appointed by the sheriff of the county wherein such city was situated, and said commissioners so to be selected or appointed should determine the rates to be charged by said company for one year or until new rates should be established.

That at the time of the alleged execution of said pretended contract set forth in paragraph IV of said bill it was provided by an act of the legislature of the State of California then in force
108 entitled "An act to provide for the incorporation of water companies," passed May 3rd, 1852, that no contract between any city of said State and any company organized to supply such city with water should take from such city the absolute and uncontrolled right to regulate the rates for water supplied to the inhabitants of such city.

That said Griffin, Beaudry, and Lazard and their said associates delayed making a formal conveyance to said complainant, Los Angeles City Water Company, until the 12th day of July, 1869, but, as hereinbefore alleged, said company acted as the owner of all of the rights, privileges, and property acquired by said Griffin, Beaudry, and Lazard under and by virtue of said pretended contract and of all the water works and other property used for the supplying of water to said city from the time of the incorporation of said company up to said formal conveyance in the same manner as it did subsequently to the execution of said conveyance.

These defendants have no information or belief upon the subject sufficient to enable them to answer the allegations of said bill in reference thereto, and they therefore deny that the rates set forth in paragraph XVII of said bill, or any of them, were agreed upon by the parties to said pretended contract as the rates charged at the time said pretended contract was made or were the rates that were charged at the time of the execution of said pretended contract

12. These defendants deny that the defendant City of Los Angeles has, ever since the making of said pretended contract set forth in paragraph IV of said bill of complaint, or at any other time, recognized the existence of said pretended contract, or that said defendant has in every year or at any other time demanded of said complainant, Los Angeles City Water Company, the performance of the various terms and conditions of said pretended contract on its part, or any of them.

109 These defendants admit that the council of said city has from time to time requested said complainant to do various things agreed in said pretended contract by said Griffin, Beaudry, and Lazard to be done by them and their assigns, but deny that such request has been made in recognition of the validity of said pretended contract; but, on the contrary, allege that said complainant, Los Angeles City Water Company, ever since its said incorporation, has been in possession of the water works of the defendant City of Los Angeles, mentioned in said pretended contract, and has been making use of the streets and public ways of said city and the lands of said defendant for the purpose of constructing reservoirs and other works and laying pipes for the supplying of water to the inhabitants of said city, and has during all that time used large quantities of waters of said Los Angeles river, the property of said defendant, for that purpose, and said defendant has merely acquiesced in said complainant, Los Angeles City Water Company, supplying water to the inhabitants of said city during said period as being a tenant at will of said defendant, which tenancy was terminable at any time at the option of said defendant, and up to the 20th day of October, 1896, consented to the taking of the waters of said river by said complainant, and the benefits, advantages, and emoluments gained and received by said complainant, without taking into consideration the waters of said river so used by said complaina-t as aforesaid during the whole of said period up to the present time have afforded an immense and generous and more than reasonable remuneration and compensation to said complainant and its stockholders for all the services which it has performed in doing the acts mentioned in paragraph XIX of said bill, and that the income derived by said complainant and its stockholders from the water rates received by it during said period for supplying the inhabitants of said city with water has always been far in excess of the reasonable interest upon the investment of said complainant in all of the property used by it in so supplying water to said inhabitants.

110 These defendants deny that said complainant, Los Angeles City Water Company, during all of the time mentioned in said paragraph XIX or during or at any other time, furnished water for sprinkling the streets of said city and for all the public uses and purposes mentioned in said paragraph or any of them, in accordance with said pretended contract and not otherwise, or that the defendant City of Los Angeles has been accepting said waters alleged in said paragraph to have been provided and furnished by said Los Angeles City Water Company for said purposes, as furnished or provided under said contract; but, on the contrary, these defendants allege that the defendant City of Los Angeles has, during all of said time, taken all of the water furnished or provided to it by said Los Angeles City Water Company free of charge as water belonging to said defendant, and taken from said Los Angeles river, and which the Los Angeles City Water Company had no right to sell or dispose of to others, as determined by the decision of the supreme court of the State of California hereinbefore referred to.

These defendants allege that said complainant, Los Angeles City

Water Company, ever since its incorporation, has continuously taken the water from said Los Angeles river belonging to said defendant city, varying in quantity from a few inches, measured under a four-inch pressure in the beginning, and gradually increasing in amount until the same amounted to several hundred inches measured under a four-inch pressure, and that shortly before the 20th day of October, 1896, said defendant notified said complainant not to take any more water from said river in excess of the ten inches mentioned in said pretended contract; but, notwithstanding said notice and without the consent, previous or otherwise, of said defendant, said complainant, Los Angeles City Water Company, has, ever since said last-mentioned date, continuously taken from said Los Angeles river a large quantity of water thereof belonging to said defendants, amounting to several hundred inches measured under a four-inch pressure, in utter disregard and willful
111 violation of the provisions of said pretended contract wherein said Griffen, Beaudry, and Lazard did, for themselves and assigns, purport to covenant not to take any water from said river in excess of ten inches without the previous consent of the predecessor of said defendant, the mayor and common council of the city of Los Angeles.

These defendants deny that the city of Los Angeles or any of its predecessors or said mayor and common council of the city of Los Angeles ever recognized any contract obligation of said Los Angeles City Water Company to do or perform all the things purported to be agreed to be performed by said Griffen, Beaudry, and Lazard and their associates, or any of said things, under said pretended contract, or has recognized or insisted upon the right of said city of Los Angeles to receive the benefits of said pretended contract or all or any of the benefits provided for in said pretended contract; but these defendants allege that all of the things which said defendant city has ever required of said Los Angeles City Water Company were demanded by said defendant as from a tenant at will who was obligated to do anything which said defendant might require, or in default thereof to abstain from using any of the property of said defendant or exercising any franchise in said city.

13. These defendants deny that under or by virtue of said pretended contract set forth in paragraph IV of said bill said complainant, Los Ang-les City Water Company, is obligated to lay pipes or supply water to the inhabitants living in any territory which was not at the date of said pretended contract included within the territorial limits of said municipal corporation known at that time as the mayor and common council of the city of Los An-eles; and these defendant- allege that the ter-itory then included in said territorial limits is only a small portion of the present territory included within the present limits of said city.

14. These defendants allege upon information and belief that said pretended contract was procured by said Griffen,
112 Beaudry, and Lazard for the benefit and use of said complainant, Los Angeles City Water Company, and that at the

time of the incorporation of said complainant and at the time of the formal assignment of said pretended contract to it, as hereinbefore alleged, the laws of the State of California expressly provided that it should be competent to amend or modify in any respect whatever or utterly repeal the charter and all laws under which said complainant was incorporated, and that the law-making power of said State ever since the incorporation of said complainant had full authority to enact the provisions of the constitution of said State set forth in paragraph XXI of said bill and to enact the statute set forth in paragraph XXII of said bill, and also to enact the provisions of the charter of said defendant city set forth in paragraph XXIII of said bill, and that all of said constitutional provisions, statutes, and charter have ever since their enactment respectively applied to and bound in every respect said complainant and the other complainants herein.

15. These defendants deny that said provisions of the constitution of the State of California set forth in paragraph XXI of said bill of complaint or any of them impair the alleged obligation of said pretended contract set forth in paragraph IV of said bill, or any contract with said Los Angeles City Water Company, or are in violation of the provisions of the Constitution of the United States prohibiting any State from passing any law impairing the obligation of any contracts or any other provision of the Constitution of the United States, or that said provisions of said constitution or the acts of the legislature mentioned in paragraph XXV of said bill are, or any one of them is, in violation of the said provision of the Constitution of the United States or in violation of amendment XIV to the Constitution of the United States, prohibiting any State from depriving any person of life, liberty, or property without due process of law, and prohibiting the said State from denying to any person within their jurisdiction equal protection of the laws, or of any other
113 provision of the Constitution of the United States.

These defendants deny that the attempt in the constitution of the State of California and the acts of the legislature mentioned in paragraph XXV of said bill to create a condition in the estate of said Los Angeles City Water Company in its alleged property, mentioned in said paragraph, whereby said title is to be defeated, is an attempt to deprive said Los Angeles City Water Company of its property without due process of law.

16. These defendants deny upon information and belief that, under the provisions of the ordinance set forth in paragraph XXVI of said bill at the rates therein fixed, the revenues of said Los Angeles City Water Company would be reduced more than forty per cent., or any per cent., or at all, below an amount which it would receive at the rates alleged in said paragraph to have been charged in 1868 for the same services; but, on the contrary, these defendants allege upon information and belief that said company would not have charged any higher rates than those fixed in said ordinance had not the same been enacted, as said last-mentioned rates were more than a full, fair, and reasonable compensation for the services performed, and said complainant, Los Angeles City

Water Company, would not have charged higher rates for fear of inviting other persons and corporations into competition with them in supplying water to the inhabitants of said city.

These defendants allege that in truth and fact said complainant voluntarily and prior to the year 1880 reduced rates for water supplied by it to the inhabitants of said city of Los Angeles far below those set forth in paragraph XVII of said *bi*bill, and that ever since and including the year 1880 up to and including the year 1895 the council of said city has yearly and with the acquiescence and consent of said complainant, Los Angeles City Water Company, and acting in pursuance of the constitutional provisions, statutes, and charter set forth in paragraphs XXI, XXII, and XXIII of
114 said bill, established and fixed the water rates to be charged by said complainant for water furnished to the inhabitants of said city of Los Angeles far below those set forth in said paragraph XVII of said bill, and that in truth and fact said provisions of said pretended contract, purporting to prohibit said mayor and council from reducing the water rates to be charged by said Griffen, Beaudry, and Lazard under said pretended contract, were, in consideration of many advantages and benefits received from the defendant City of Los Angeles and its predecessor by said Los An-eles City Water Company, waived and abandoned by said Los Angeles City Water Company many years prior to the passage of said ordinance set forth in paragraph XXVI of said bill, and said provisions of said pretended contract have never been observed or carried into effect or recognized by this defendant or said Los Angeles City Water Company since the year 1879.

And these defendants on information and belief deny that under the provisions of said last-mentioned ordinance the ability of said Los Angeles City Water Company to make the necessary extensions and construct the necessary improvements to meet the wants and keep up with the progress of said Los Angeles city will be greatly or at all impaired, or that the amount of the rent which said Crystal Springs Land and Water Company would receive will be forty per cent. less than it is entitled to receive, or that the ability of said Los Angeles City Water Company to pay its interest upon outstanding bonds or to maintain the operating expenses or repairs or improvements necessary for the proper administration of any system or to comply with said pretended contract set forth in paragraph IV of said bill will be greatly or at all impaired, or that said Los Angeles City Water Company or said Crystal Springs Land and Water Company will be deprived of any revenues which it ought to receive or will be unable in any respect to carry on its business or any business or to properly perform said pretended con-
115 tract; but, on the contrary, these defendants allege on information and belief that said Los An-eles City Water Company would not and could not have collected any greater rates for water supplied by it to the inhabitants of said city of Los Angeles than those set forth in said ordinance mentioned in paragraph XXVI of said bill had said ordinance not been passed.

17. These defendants deny that if said Los Angeles City Water

Company should attempt to take more than the rates fixed in said last-mentioned ordinance the defendant City of Los Angeles would claim that the property of said Los Angeles City Water Company was forfeited to said defendant or would attempt to enforce such forfeiture.

These defendants deny that the complainants or any of them cannot maintain all rights which they might possess under the several pretended contracts set forth in said bill, except at the peril of the loss of their property mentioned in paragraph XVII of said bill or any other property, or at the peril of the certainty of their being greatly or otherwise interfered with by said City of Los Angeles in their attempts to maintain or operate said property.

18. These defendants deny upon information and belief that the matter in dispute in this suit exceeds, exclusive of interest and costs or otherwise, the sum or value of $150,000 or any other sum or value, but, on the contrary, this defendant alleges upon information and belief that said complainants do not in good faith contest said ordinance set forth in paragraph XXVI of said bill, and do not in good faith contend that the rates therein fixed are not reasonable and fair, or that said rates are below those which would have been charged by said Los Angeles City Water Company of its own motion, and that the sole and only object of complainants in bringing this suit is to endeavor to have the question of the title to the alleged percolating waters mentioned in said bill tried in this court under the
116 guise and pretense that said complainants are endeavoring to contest said last-mentioned ordinance and in order to attempt to confer jurisdiction on this court by raising questions in regard to the invalidity of said last-mentioned ordinance as being repugnant to the Constitution of the United States.

Wherefore these defendants, having shown to this court by this answer that it has no jurisdiction of this cause, prays that said bill of complaint be dismissed for want of such jurisdiction; and, having thus made answer fully to said bill, these defendant- pray to be hence dismissed with costs.

W. E. DUNN,
City Attorney,
LEE & SCOTT,
Solicitors for said Defendant-.

STATE OF CALIFORNIA, }
County of Los Angeles, } ss:

E. L. Blanchard, being duly sworn, says that he is one of the defendants named in the foregoing answer; that the same is true of his own knowledge except as to the matters which are therein stated on his information or belief, and as to those matters that he believes it to be true.

E. L. BLANCHARD.

Subscribed and sworn to before me this 7 day of Sept., A. D. 1897.

[SEAL.] ROBERT A. TODD,
Notary Public in and for the County of Los Angeles, State of California.

(Endorsed:) No. 734. U. S. circuit court, so. dist. of California. Los Angeles City Water Co. *et al.*, compl'ts, *vs.* City of Los Angeles *et al.*, def'ts. Answer of Herman Silver *et al.* Received copy of within answer this 7th day of Sept'r, 1897. White & Monroe and J. S. Chapman, sol'rs for complainants. Filed Sep. 7, 1897. Wm. M. Van Dyke, clerk. W. E. Dunn, Lee & Scott, rooms 411–414 Bullard block, Los Angeles, California, sol'rs for def'ts.

117 In the Circuit Court of the United States, Ninth Circuit, for the Southern District of California.

LOS ANGELES CITY WATER COMPANY, Crystal Springs Land & Water Company, and S. G. Murphy, Complainants,
vs.
THE CITY OF LOS ANGELES ET AL., Defendant.
} No. 734. Replication.

The Replication of the Above-named Complainants to the Answer of the Above-named Defendant, The City of Los Angeles.

These replicants, saving and reserving to themselves all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of said defendant, for replication thereunto say that they do and will ever maintain and prove their said bill to be true, certain, and sufficient in the law to be answered unto by said defendant, and that the answer of said defendant is very uncertain, evasive, and insufficient in the law to be replied unto by these replicants; without that that, any other matter or thing in the said answer contained material or effectual in the law to be replied unto, confessed or avoided, traversed or denied, is true; all which matters and things these replicants are ready to aver, maintain, and prove as this honorable court shall direct, and humbly as in and by their said bill they have already prayed.

J. S. CHAPMAN,
WHITE & MONROE,
Solicitors for Complainants.

118 (Endorsed:) No. 734. Circuit court of the United States, ninth circuit, southern district of California. Los Angeles City Water Co. *et al.*, complainant-, *vs.* The City of Los Angeles, defendant. Replication. Received copy of the within this 22 day of Sept., 1897. W. E. Dunn & Lee & Scott, attorneys for def'ts. Filed Sep. 23, 1897. Wm. M. Van Dyke, clerk. White & Monroe, rooms No. 11–13 Temple block, Los Angeles, Cal., solicitors for complainants.

119 In the Circuit Court of the United States, Ninth Circuit, for the Southern District of California.

Los Angeles City Water Company, Crystal Springs Land & Water Company, and S. G. Murphy, Complainants, *vs.* The City of Los Angeles, Hermann Silver, Z. D. Matthus, L. M. Grider, E. L. Blanchard, C. H. Toll, James Ashman, E. L. Hutchison, F. M. Nickell, and F. L. Baker, Defendants.	No. 734.	Replication.

The replication of the above-named complainants to the answer of the above-named defendants, Hermann Silver, Z. D. Matthus, L. M. Grider, E. L. Blanchard, C. H. Toll, James Ashman, E. L. Hutchison, F. M. Nickell, and F. L. Baker.

These replicants, saving and reserving to themselves all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of said defendants, for replication thereunto say that they do and will ever maintain and prove their said bill to be true, certain, and sufficient in the law to be answered unto by said defendants, and that the answer of said defendants is very uncertain, evasive, and insufficient in the law to be replied unto by these replicants; without that, that any other matter or thing in the said an-
120 swer contained material or effectual in the law to be replied unto to, confessed or avoided, traversed or denied, is true; all which matters and things these replicants are ready to aver, maintain, and prove as this honorable court shall direct, and humbly as in and by their said bill they have already prayed.

J. S. CHAPMAN,
WHITE & MONROE,
Solicitors for Complainants.

(Endorsed:) No. 734. Circuit court of the United States, ninth circuit, southern district of California. Los Angeles City Water Company *et al.*, complainants, *vs.* Herman Silver *et al.*, defendants. Replication. Received copy of the within this 23 day of September, 1897. W. E. Dunn & Lee & Scott, attorneys for def'ts. Filed Sep. 23, 1897. Wm. M. Van Dyke, clerk. J. S. Chapman & White & Monroe, rooms No. 11–13, Temple block, Los Angeles, Cal., solicitors for complainants.

121 In the Circuit Court of the United States, Ninth Judicial Circuit, Southern District of California.

LOS ANGELES CITY WATER COMPANY, CRYSTAL SPRINGS Land & Water Company, and S. G. Murphy, Complainants,

vs.

THE CITY OF LOS ANGELES, HERMAN SILVER, Z. D. Matthuss, L. M. Grider, E. L. Blanchard, C. H. Toll, James Ashman, E. L. Hutchison, F. M. Nickell, and F. L. Baker, Composing the Council of the City of Los Angeles, Defendants. } No. 734.

The complainants filed their bill of complaint herein on the 4th day of March, 1897; which bill of complaint is hereto annexed.

A subpœna to appear and answer in said cause was thereupon on said 4th day of March, 1897, issued, returnable on the 5th day of April, 1897, which is hereto annexed.

On the 5th day of April, 1897, the defendants, The City of Los Angeles, Herman Silver, Z. D. Matthuss, L. M. Grider, E. L. Blanchard, C. H. Toll, James Ashman, E. L. Hutchinson, F. M. Nickell, and F. L. Baker, appeared herein by W. E. Dunn, Esq., their solicitor, and Messrs. Lee & Scott, of counsel.

The exceptions of defendant The City of Los Angeles to the bill of complaint were filed herein on the 7th day of June, 1897, and *is* hereto annexed.

The exceptions of the defendants Herman Silver *et al.* to the bill of complaint were filed herein on the 7th day of June, 1897, and *is* hereto annexed.

122 The demurrer of defendant The City of Los Angeles to the bill of complaint was filed herein on the 7th day of June, 1897, and is hereto annexed.

The demurrer of defendants Herman Silver *et al.* to the bill of complaint was filed herein on the 7th day of June, 1897, and is hereto annexed.

On the 15th day of June, 1897, the court made and entered herein an order allowing the 4th and 5th of the exceptions of defendant The City of Los Angeles to the bill of complaint and overruling the others, a copy of which order is hereto annexed.

On the 15th day of June, 1897, the court made and entered herein an order allowing the 4th and 5th of the exceptions of defendants Herman Silver *et al.* and overruling the others, a copy of which order is hereto annexed.

On the 21st day of June, 1897, the court made and entered an order herein amending the order made and entered herein on the 15th day of June, 1897, allowing the 4th and 5th exceptions taken by defendant The City of Los Angeles to complainants' bill of complaint, a copy of which order is hereto annexed.

On the 21st day of June, 1897, the court made and entered herein an order amending the order made and entered herein on the 15th day of June, 1897, allowing the 4th and 5th exceptions taken by the

defendants Herman Silver *et al.* to complainants' bill of complaint, a copy of which order is hereto annexed.

On the 29th day of July, 1897, the court made and entered an order herein overruling the demurrer of defendant The City of Los Angeles to complainants' bill of complaint, a copy of which order is hereto annexed.

On the 29th day of July, 1897, the court made and entered herein an order overruling the demurrer of defendants Herman Silver *et al.* to complainants' bill of complaint, a copy of which order is hereto annexed.

123 On the 7th day of September, 1897, the answer of defendant The City of Los Angeles to the bill of complaint was filed herein and is hereto annexed.

On the 7th day of September, 1897, the answer of defendants Herman Silver *et al.* to the bill of complaint was filed herein and is hereto annexed.

The replication of complainants to the answer of defendant The City of Los Angeles was filed herein on the 23rd day of September, 1897, and is hereto annexed.

The replication of complainants to the answer of defendants Herman Silver, Z. D. Matthus, L. M. Grider, E. L. Blanchard, C. H. Toll, James Ashman, E. L. Hitchinson, F. M. Nickell, and F. L. Baker was filed herein on the 23rd day of September, 1897, and is hereto annexed.

On the 14th day of February, 1898, being a day in the January term, A. D. 1898, of said circuit court of the United States for the southern district of California—present, the Honorable Olin Wellborn, district judge—the stipulation of facts made by the solicitors for the parties to this cause having been filed herein, said cause was thereupon submitted to the court for its consideration and decision upon the pleadings, the said stipulation of facts, and upon briefs which were thereafter filed on behalf of the respective parties.

On the 31st day of May, 1898, the court made and entered an order herein that a decree in favor of complainants, conformable to the opinion of the court on that day read, be entered herein, and on the 20th of June, 1898, a final decree in accordance with the terms of said order was signed, filed, entered, and recorded herein, and is hereto annexed:

124 In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

LOS ANGELES CITY WATER COMPANY, CRYSTAL Springs Land & Water Company, and S. G. Murphy, Complainants, *vs.* THE CITY OF LOS ANGELES, HERMAN SILVER, Z. D. Matthuss, L. M. Grider, E. L. Blanchard, C. H. Toll, James Ashman, E. L. Hutchison, F. M. Nickell, and F. L. Baker, Composing the Council of the City of Los Angeles, Defendants.	No. 734.	Decree.

This cause came on to be heard at this term and was argued by counsel, and thereupon, upon consideration thereof, it is ordered, adjudged, and decreed that the contract set out in the bill of complaint herein and entered into on the 22nd day of July, 1868, between the city of Los Angeles and J. S. Griffin, P. Beaudry, and Solomon Lazard, in so far as said contract provides that the city shall not reduce the water rates below those charged on the date of said contract, is valid, and that the ordinance set out in said bill of complaint passed by the council of the city of Los Angeles at its meeting on February 23rd, 1897, purporting to regulate the rates and compensation allowed to be collected by any person or corporation supplying water for domestic and private purposes to inhabitants of the city of Los Angeles during the year commencing July 1, 1897, and ending June 30, 1898, did reduce the water rates below those charged on the date of said contract and impaired the obligation of said contract, and said ordinance is null and
125 void; and it is further ordered, adjudged, and decreed that said ordinance be, and the same is hereby, vacated and set aside and held for naught.

It is further ordered, adjudged, and decreed that the complainants recover their costs herein against the defendants, taxed at — dollars.

It is further ordered, adjudged, and decreed, pursuant to the stipulation of the parties, that this decree shall neither be conclusive upon the title to either party to this suit to lands, rights of way, waters and water rights, and easements of all descriptions mentioned in the bill of complaint herein, nor shall this decree be admissible in evidence in any other litigation between the complainants and defendants or any of them upon the question of title to said properties.

OLIN WELLBORN, *Judge.*

June 20, 1898, Los Angeles, Cal.

Decree entered and recorded June 20th, 1898.

WM. M. VAN DYKE, *Clerk.*

(Endorsed:) No. 734. Circuit court of the United States, ninth circuit, southern district of California. Los Angeles City Water Co. *et al.*, complainants *vs.* The City of Los Angeles *et al.*, defendants. Final decree. Filed Jun- 20, 1898. Wm. M. Van Dyke, clerk. Stephen M. White, rooms 11–13 Temple block, Los Angeles, attorney for ——.

126 Whereupon said bill of complaint, subpœna, exceptions of defendant The City of Los Angeles, exceptions of defendants Herman Silver *et al.*, demurrer of defendant The City of Los Angeles, demurrer of defendants Herman Silver *et al.*, copy of order allowing 4th and 5th of the exceptions of defendant The City of Los Angeles, copy of order allowing 4th and 5th exceptions of defendants Herman Silver *et al.*, copy of order modifying order allowing 4th and 5th exceptions of defendant The City of Los Angeles, copy of order modifying order allowing 4th and 5th exceptions of defendants Herman Silver *et al.*, copy of order overruling demurrer of defendant The City of Los Angeles, copy of order overruling demurrer of defendants Herman Silver *et al.*, answer of defendant The City of Los Angeles, answer of defendants Herman Silver *et al.*, replication of complainants to answer of the City of Los Angeles, replication of complainants to answer of Herman Silver *et al.*, and said final decree are hereto annexed, said final decree being duly signed, filed, and enrolled pursuant to the practice of said circuit court.

Attest, etc.:

[SEAL.] WM. M. VAN DYKE, *Clerk.*

(Endorsed:) No. 734. In the circuit court of the United States, ninth judicial circuit, for the southern district of California. Los Angeles City Water Co. *et al. vs.* The City of Los Angeles *et al.* Enrolled papers. Filed June 20th, 1898. Wm. M. Van Dyke, clerk. Recorded, Decree Register Book No. 2, page 256.

127 In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

LOS ANGELES CITY WATER COMPANY ET AL., Complainants, *v.* THE CITY OF LOS ANGELES ET AL., Defendants. } No. 734.

Opinion of the Court on Final Trial.

This suit, which is now under submission on the pleadings and an agreed statement of facts, was brought to annul an ordinance of the council of the city of Los Angeles, adopted February the 23rd, 1897, fixing water rates during the year commencing July the 1st, 1897, and end.ng June the 30th, 1898, on the ground that said ordinance impairs the obligation of the contract hereinafter mentioned, and is therefore repugnant to the constitution of the United States.

The material facts of the case are these:

On July the 22nd, 1868, the city of Los Angeles, as party of the first part, and John S. Griffin, P. Beaudry, and Solomon Lazard, as parties of the second part, entered into a contract whereby said city, for the consideration below indicated, leased its water works
128 to said Griffin, Beaudry, and Lazard and their assigns for a term of thirty years, with the right to lay pipes in the streets and sell and distribute water for domestic purposes to the inhabitants of said city, and to receive the profits thereof, and with the additional right to take water from the Los Angeles river at a point at or above the present dam, provided that the said parties of the second part should at no time take from said river for the use of said water works more than ten inches of water without the previous consent of the mayor and common council of said city, and that they would, within sixty days from the date of the contract, select the point where the water should be taken from said river, and the city bound itself not to make any other lease, sale, contract, grant, or franchise to any person, corporation, or company for the sale or delivery of water to the inhabitants of said city for domestic purposes during the continuance of the contract, and reserved the right to regulate water rates as follows: "Always provided that the mayor and common council of said city shall have, and do reserve, the right to regulate the water rates charged by said parties of the second part or their assigns, provided that they shall not so reduce such water rates or so fix the price thereof to be less than those now charged by the parties of the second part for water."

For the lease and grants aforesaid the parties of the second part undertook and promised to pay said city a yearly rental of fifteen hundred dollars; to cancel certain claims of said parties against said city, amounting to about eight thousand dollars; to lay down in the streets of said city twelve miles of iron pipes of sufficient capacity to supply the inhabitants of said city with water for domestic purposes and extend said pipes as fast as the citizens desiring water for domestic purposes would agree to take sufficient water to pay ten per cent. per annum upon the cost
129 of such extensions, and erect one hydrant, as protection against fire, at one corner of each crossing of streets where pipes were or might thereafter be laid; to erect an ornamental fountain on the public plaza, at a cost not to exceed one thousand dollars; to construct and erect, within two years, such reservoirs, machinery, ditches, and flumes as would secure to the inhabitants of said city a constant supply of water for domestic purposes; to furnish water free of charge for the public-school houses, hospitals, and jails; to keep in repair all of said improvements, at the cost and expense of the parties of the second part, for said term of thirty years, and to return said water works to said party of the first part at the expiration of said term in good order and condition, reasonable wear and damage of the elements excepted, upon payment to said parties of the value of the aforesaid improvements, to be ascertained as provided for in the contract; to give a bond in the sum of twenty thousand dollars for the performance of said contract, and to pay all

State and county taxes assessed upon said water works during said period of thirty years.

Griffin, Beaudry, and Lazard applied for and procured said contract on behalf and for the benefit of themselves and other persons, with the intention of forming a corporation to carry out said contract, and afterwards, about the middle or latter part of August, 1868, themselves and said other persons being the incorporators, organized, under the laws of the State of California, the Los Angeles City Water Company, for the purpose of supplying the inhabitants of said city with water for domestic purposes, etc., under the terms of said contract, and assigned all their rights and franchises under said contract to said company by a written instrument dated June
the 12th, 1869, and recorded in the office of the recorder of
130 said county of Los Angeles, June the 15th, 1869.

On April the 2nd, 1870, the legislature of California passed an act hereinafter set forth, in terms ratifying and confirming said contract.

Griffin, Beaudry, and Lazary did nothing personally in carrying out said contract or constructing or maintaining said water works, but said company, after it was organized, took possession of said water works, and has performed all of the above-mentioned obligations of said contract, except the one providing for the return of the water works at expiration of lease, and, in such performance, has laid 320 miles of pipe, erected over 500 hydrants for protection against fire, and constructed six reservoirs, with an aggregate capacity of nearly sixty-six millions of gallons, and is now, as it has been at all times since the contract was made, furnishing the city of Los Angeles with water for the extinguishment of fires and for the public schools, hospitals, and jails in said city, free of charge. The aforesaid extensions of the water works were rendered necessary by the growth of said city, whose population in 1868 was between 5,000 and 6,000, and is now about 103,000.

During the whole of the year 1868 the territorial limits of the city of Los Angeles were as follows: Four square leagues in a square form, the center of which was the center of the old pueblo plaza.

About 1872 the limits were extended 420 yards south of the former south boundary, and within the past three years, and prior to July, 1897, the limits were further extended so as to take in between ten and fifteen square miles of additional adjoining territory. Immediately after the extension of the said limits, the Los Angeles City
Water Company began to extend its pipes over the said ad-
131 dition to the city as the same was settled up and improved,
and ever since has been and is now furnishing water to the people in said district added to the original territory of the city, and, upon the demands of the city council, erected fire-hydrants within the said additional territory and furnished water free of charge, and has in all respects continued to lay pipes, erect fire-hydrants, and furnish the inhabitants with water for domestic uses in like manner as it has conducted the same business within the original limits of the city as established by the act incorporating it, and so with the more recent extensions of the city limits, to wit,

those made within the last three years, the company has also extended its pipes in portions of those limits and furnished water in the same way.

The quantity of water required to supply the domestic wants of the people of said city is one inch of water, measured under a four-inch pressure, to every one hundred inhabitants. To meet the increased demands upon it for water under said contract said company has, among other things, purchased the system known as the Beaudry system of water works, and also certain water rights in the Arroyo Seco, and conducted water from the Arroyo Seco into the city on the east side of the Los Angeles river, and has been furnishing the inhabitants of that portion of the city with water from said system, and also acquired the stock of the corporation known as the East Side Spring Water Company, the same mentioned in paragraph 10 of the complaint.

In the growth of the city its settlement extended to localities of higher elevation than those occupied by its inhabitants at the time of said contract, and the point originally selected for the diversion of the water of the Los Angeles river for supplying the city and its inhabitants, as in said contract provided, was so located in
132 said river that it was impracticable to there maintain dams and diversion works that would not occasionally be swept away or rendered useless by floods, and the surface water of the river after severe storms became muddy and unfit for supplying the inhabitants with water for domestic uses, and in the year 1889 the Crystal Springs Land and Water Company made excavations in the places referred to in the bill of complaint and laid the pipes therein as alleged, and the water that has been used by the Los Angeles City Water Company for supplying the city with water, as provided in said contract, has ever since been obtained from that source, except that from time to time a further supply of water has been taken from the Los Angeles river in order to supply said inhabitants, which diversions have been at or near the place where the said underground pipes are laid, and that by these means the water can be delivered to the higher elevations, and the underground waters, as to quality and amount, are thus protected against the influences of floods.

The Los Angeles City Water Company ever since its incorporation has taken more than ten inches of water, measured under a four-inch pressure, from the Los Angeles river, and the amount taken has increased with the increase of the population of the city and the demands of the municipality itself for water for extinguishing fires and the other public purposes referred to in the said contract, and the amount has increased until now it requires from 1,000 to 1,500 inches of water, measured under a four-inch pressure, for such purposes, and during the summer season the amount of water used by the Los Angeles City Water Company for the purposes aforesaid runs from 1,000 to 1,500 inches under a four-inch pressure, inclusive of the water obtained by the underground excavations, which latter furnish from 650 to 690 inches, measured under a four-
133 inch pressure.

The city of Los Angeles has always had flowing in the Los

Angeles river, at the point from which said Los Angeles City Water Company has always diverted water from said river, a quantity of water sufficient to have supplied said Los Angeles City Water Company with all the water required to supply said city and its inhabitants with water for domestic purposes and municipal uses, and has never objected, up to October 20, 1896, to said Los Angeles City Water Company taking as much water from said river as it might require for said uses, and during all of said period said city has never objected to said company's taking from the surface stream of said river at said point as much water as said company needed for said uses.

On October the 19th, 1896, the council of the city of Los Angeles adopted a resolution requiring the Los Angeles City Water Company to pay to the city of Los Angeles an amount of money equal to forty per cent. of the gross rates received by said company from the consumers of water as rental for all water taken by said company from the Los Angeles river, and before the 21st day of October, 1896, to attorn to the city of Los Angeles, as tenant of said city, for all of the water so taken from said river, and to agree to pay said rental to said city, and in case of failure to attorn and agree to pay said rental, to refrain from diverting, taking, or interfering with any of the water mentioned in said resolution (except ten inches) after the 20th day of October, 1896.

On October the 19th, 1896, the city attorney, in writing, notified the Los Angeles City Water Company and the Crystal Springs Land and Water Company of said resolution and demanded compliance therewith, delivering a copy of said resolution to each of
134 said companies. Neither of them ever attorned to said city for said water or any part thereof or ever agreed to pay any rental for the same. After the passage of said resolution and ever since said notification, up to the present time, the Los Angeles City Water Company has continually taken from the Los Angeles river, at a point above the northern boundary of said city, for the purposes of distribution and selling the same in said city, a quantity of water varying from 400 to 1,000 inches, measured under a four-inch pressure.

On the 19th day of April, 1870, the common council of the city of Los Angeles accepted, and the mayor approved, the following report:

"To the honorable the mayor and common council of the city of Los Angeles and the Los Angeles City Water Company:

"The undersigned, commissioners duly appointed on behalf of your honorable bodies to adjust, fix, and establish the rates and charges of the Los Angeles City Water Company (a corporation duly incorporated under the laws of the State of California for the purpose of supplying the inhabitants of Los Angeles city with pure, fresh water), respectfully report that they have established water rates and charges for domestic purposes, taking as a guide as near as can be the charges and rates for domestic purposes charged in July, 1868; that your committee have also fixed the rates and

charges for other reasonable objects and purposes, and report as follows, to wit: "

Then follow the rates agreed upon.

The commissioners referred to in said report had been previously selected, two by the city and two by the Los Angeles City Water Company.

In June, 1871, the city council, on a report of a committee constituted similarly to the one above mentioned, established
135 the same rates as those established in April, 1870.

On the 13th of August, 1874, a committee, constituted in the same manner and for the same purposes as the committee already mentioned, reported that they had established water rates and charges for domestic purposes, taking as a guide, as near as possible, the charges and rates for domestic and other reasonable objects and purposes charged in July, 1868. The report was adopted and a committee appointed in conjunction with the city attorney to draft an ordinance embodying the rates fixed in said report, and thereafter, on August the 20th, 1874, an ordinance so drawn was adopted by the council of said city, and the rates established by said ordinance were the same as those established in 1870 and 1871.

Since and including the year 1880 the city council of the city of Los Angeles has in February of each year passed an ordinance fixing the rates to be charged by all corporations and persons within said city supplying water to the inhabitants thereof, to be in force for one year from and including July the 1st, which rates have been less than the rates charged in 1870, as contained in the ordinance hereinbefore mentioned, and the Los Angeles City Water Company has collected the rates thus fixed by the city of Los Angeles, and no more, but in the year 1896 the council of the city of Los Angeles passed an ordinance fixing the rates to be charged for water for the year commencing July the 1st, 1896, and ending June 30th, 1897, at less than they had ever been fixed before, and a suit was then brought by the complainants herein in this court against the city of Los Angeles to set aside the said ordinance, and in February of the year 1897 the city of Los Angeles passed the ordinance which is assailed in this suit, making a still further reduction in the rates.

136 The action of the Los Angeles City Water Company in collecting the rates fixed by said several ordinances constitutes the only acquiescence (if it be an acquiescence) in the action of said council.

If the rates established in 1870 were collected for the year beginning July the 1st, 1897, and ending June the 30th, 1898, the revenues received by the Los Angeles City Water Company from said rates would be more than fifty thousand dollars in excess of the amount which would be received under the rates named in the ordinance of February, 1897.

In January, 1882, the Los Angeles City Water Company furnished to the council of the city of Los Angeles a statement of its transactions for the preceding year, protesting at the same time against the establishment of any rates less than those which were in force

at the date of the lease hereinbefore mentioned, to wit, July the 22nd, 1868.

In January, 1883, said company again furnished said council with a statement showing the names of the consumers of water, the rates paid during the year preceding the date of the statement, and also an itemized statement of the expenditures made for supplying water during the year preceding, but expressly denying any legal right on the part of the council to demand said statement or to fix any rates less than those which were in force in July, 1868.

Similar statements, accompanied by similar protests, were made annually thereafter up to and including the year 1889, and since that time unverified statements or reports showing its receipts and expenditures have been made by said company to the city council each year.

Article XIV of the present constitution of California, adopted in 1879, is as follows:

137 "ARTICLE XIV.

"*Water and Water Rights.*

"SECTION 1. The use of all water now appropriated, or that may hereafter be appropriated, for sale, rental, or distribution is hereby declared to be a public use, and subject to the regulation and control of the State, in the manner to be prescribed by law: Provided, that the rates or compensation to be collected by any person, company, or corporation in this State for the use of water supplied to any city and county, or city or town, or the inhabitants thereof, shall be fixed, annually, by the board of supervisors, or city and county, or city or town council, or other governing body of such city and county, or city or town, by ordinance or otherwise, in the manner that other ordinances or legislative acts or resolutions are passed by such body, and shall continue in force for one year and no longer. Such ordinances or resolutions shall be passed in the month of February of each year, and take effect on the first day of July thereafter. Any board or body failing to pass the necessary ordinances or resolutions fixing water rates, where necessary, within such time, shall be subject to peremptory process to compel action at the suit of any party interested, and shall be liable to such further processes and penalties as the legislature may prescribe. Any person, company, or corporation collecting water rates in any city and county, or city or town in this State, otherwise than as so established, shall forfeit the franchises and water works of such person, company, or corporation to the city and county, or city or town where the same are collected, for the public use.

"SEC. 2. The right to collect rates or compensation for the use of water supplied to any county, city and county, or town, or
138 the inhabitants thereof, is a franchise, and cannot be exercised except by authority of and in the manner prescribed by law."

To carry out these provisions of the constitution, the legislature of California passed an act entitled "An act to enable the board of

supervisors, town council, board of aldermen," etc., which was approved March the 7th, 1881. (Statutes of California 1881, page 54.)

In the year 1888 the electors of the city of Los Angeles, pursuant to provisions of the constitution of said State authorizing them so to do, adopted a charter for said city, which charter was, under the provisions of said constitution, submitted to the legislature of said State for its approval, ratification, and adoption, and the said charter was, on the 31st day of January, 1889, adopted by said legislature, and thereupon became and ever since has been the charter of the said city of Los Angeles, and by the said charter it is provided, in section 192, as follows:

"The rates of compensation for use of water to be collected by any person, company or corporation in said city shall be fixed annually by ordinance and shall continue in force for one year, and no longer. Such ordinance shall be passed in the month of February of each year, and take effect on the first day of July thereafter. Should the council fail to pass the necessary ordinance fixing the water rates within the time hereinbefore prescribed, it shall be subject to peremptory processes to compel action at the suit of any party interested."

The ordinance of 1897 now sought to be annulled was passed pursuant to the foregoing constitutional and statutory provisions.

The facts showing the connection of S. G. Murphy and the Crystal Springs Land and Water Company with the litigation
139 need not be enumerated, since the defendants waive all questions as to the joinder of these parties, and said facts are not material to any point determined in this opinion.

The agreed statement of facts contains certain stipulations in regard to the issues submitted, which are likewise immaterial here, but which will be carried into the final decree.

Complainants' contention, succinctly stated, is that said ordinance of February, 1897, impairs the obligation of the contract of July the 22nd, 1868, between the city of Los Angeles and the assignors of the Los Angeles City Water Company, Griffin, Beaudry, and Lazard, in that the rates fixed by said ordinance are less than the rates charged at the date of said contract, and therefore said ordinance is repugnant to the Constitution of the United States and ought to be annulled. This contention clearly involves a question of Federal cognizance.

The defenses to the suit are as follows:

First. That said contract, in so far as it purports to limit the right of the city to regulate water rates, was on the part of the city unauthorized and is void.

Second. That the evidence fails to show that the rates fixed by said ordinance of 1897 are less than the rates that were charged by the assignors of said water company at the date of said contract.

Third. That said water company, since October the 20th, 1896, has continuously violated a material provision of said contract by taking from the Los Angeles river more than ten inches of water measured under a four-inch pressure.

Fourth. That there has been such acquiescence by the water company in the right of the city to regulate water rates unrestrained by said contract as now precludes complainants from obtain-
140 ing the relief sought.

Fifth. That the injuries resulting from said ordinance are not irreparable, and complainants have adequate legal remedies.

These defenses will be considered separately and in the order of their statement.

1. A question has been raised by the defendants as to the proper construction of that clause of the contract above mentioned limiting the right of the city to regulate water rates, and it will be best to determine that question before passing upon the validity of said clause. The contention of defendants is that said clause refers exclusively to a right of regulation given the city by the contract itself, and was not intended as a limitation upon any power which had been or might thereafter be conferred by the legislature of the State. This contention is not well taken. The contract does not grant nor purport to grant to the city any right in respect to the regulation of rates, the language being that "the mayor and common council of said city shall have, and do reserve, the right to regulate water rates," etc. The use of the word "reserve" shows that the parties were contracting, not with reference to a right which it was supposed the lessess were granting to the city, but with reference to a power or right which they assumed the city already possessed. The parties manifestly intended by the clause now under consideration that the lessees should have a right to the minimum rates prescribed, namely, the rates that were then charged, and if the city was authorized to make such an agreement, neither it nor the legislature of the State could thereafter lawfully reduce the rates below the minimum so agreed upon. Whether or not these minimum rates are collectible by actions at law before they have been established by the city need not be determined here. I now
141 come to the question of authority.

The city of Los Angeles was incorporated by an act of the legislature of California passed April the 4th, 1850, which simply described the boundaries of the city and declared it to be incorporated according to the provisions of the act entitled "An act to provide for the incorporation of cities," passed March the 11th, 1850, fixed the number of councilmen at seven, and made said city successor to all the rights, claims, and powers of the pueblo of Los Angeles in regard to property.

Section 2 of the aforesaid act of March 11, 1850, is as follows:

"§ 2. When any city is incorporated by a special act of the legislature, such act may simply define the boundaries of the city, and declare it incorporated, in which case it shall be deemed incorporated according to the provisions of this act; or may declare it incorporated under the same, with such changes as may be specially named."

Section 7 of said act gives to any city incorporated thereunder power to grant franchises, hold and receive property, real and personal, within said city; to lease, sell, and dispose of the same for

the benefit of said city (Statutes of California, 1850, page 86). Section 11 of the same act provides that the city council "shall have the power * * * to establish a fire department, and to make regulations to prevent and extinguish fires; * * * to provide for supplying the city with water."

Did these acts of the legislature empower the city of Los Angeles to make the agreement in question?

"It is a general and undisputed proposition of law that a municipal corporation possesses and can exercise the following powers and no others: First, those granted in express words; second, those necessarily or fairly implied in or incident to the powers
142 expressly granted; third, those essential to the declared objects and purposes of the corporation—not simply convenient, but indispensable. Any fair, reasonable doubt concerning the existence of power is resolved by the courts against the corporation, and the power is denied * * *" (1 Dillon on Municipal Corporations, § 89, p. 115).

This text is cited with approval by defendants in their brief and, without referring to the numerous cases also cited in the same connection, may be accepted as a clear summary of the law on the subject to which it relates.

The power of the city of Los Angeles to agree upon water rates, I think, is fairly implied in the power "to provide for supplying the city with water," and therefore falls within the second class of powers enumerated by Judge Dillon.

Two cases, and only two cases, directly in point have been called to my attention: Santa Ana Water Company *v.* Town of San Buenaventura, 56 Fed. Rep., 339, and Illinois Trust and Savings Bank *v.* City of Arkansas City, 76 Fed. Rep., 271. Both of these cases sustain the conclusion which I have just announced, and in the former case, where the facts were strikingly analogous to those in the case at bar, Judge Ross held valid an agreement whereby the town of San Buenaventura granted to the assignors of the Santa Ana Water Company "the unrestrained right to establish such rates for the supplying of water to private persons as they may deem expedient, provided that such rates be general." From the opinion of Judge Ross I quote as follows:

"The doctrine is firmly established that the State may by a contract restrict the exercise of some of its most important powers," citing New Orleans Gas Co. *v.* Louisiana Light, etc., Co., 115 U. S., 650, and Waterworks Co. *v.* Rivers, 115 U. S., 674. "* * * The principle controlling the decisions cited is a just and plain
143 one. The duty is imposed upon the legislative power that creates a municipal corporation to provide for the necessary elements of gas and water. It may, at its discretion, do so directly or it may, in the absence of any constitutional inhibition, say directly or through the municipal corporation so created to its individual citizens, in the language of the Supreme Court (Binghampton Bridge, 3 Wall., 74): 'If you will embark with your time, money, and skill in an enterprise which will accommodate the public necessities, we will grant to you for a limited period or in perpetuity

privileges that will justify the expenditure of your money and the employment of your time and skill.' Such a grant, said the court in the case from which the quotation is taken, 'is a contract with mutual considerations, and justice and good policy alike require that the protection of the law should be assured to it.'"

Defendants cite a large number of cases to the effect that a general power conferred upon a municipal corporation to supply the city with water does not include authority to grant an exclusive franchise therefor to others. This proposition, however, is not now before the court, since the defendants admit that the fact of an exclusive franchise having been granted to the complainants' assignors, if such was the case, does not vitiate the contract in other respects. To my mind there is a clear and broad distinction, so far as concerns the power of a municipal corporation to make them, between the grant of an exclusive franchise to supply the city with water and an agreement which abridges the right of such corporation to regulate the price of the water so supplied. The grant of an exclusive franchise is not an indispensable or even an appropriate means to the procurement of water, and, besides, creates a monopoly (and it is upon these grounds that many of the decisions holding
144 such grants inoperative are rested), while an agreement fixing the price to be paid for water does not destroy nor is it inimical to competition and is both appropriate and indispensable to a reasonable and convenient exercise of the general power to supply water. In procuring water or any other commodity by purchase one of the first things to be considered and agreed upon is the matter of price. Therefore, to hold that general power without limitation in a municipal corporation to supply the city with water does not include power to agree upon price, it seems to me, would be a solecism.

In State *v.* La Clede Gaslight Co., 102 Mo. Rep.; S. C., 22 Amer. State Rep., 795, the court says:

"It is not open to doubt or dispute that this power to make and vend gas carries with it as an invariable incident the right to fix the price of the gas thus made and sold. No other conclusion can be drawn from the premises. A sale implies a price. It would be but the granting of a barren right, indeed, which would confer power to incur expense and perform labor and yet deny the power to fix and to reap the fruits of that labor, to wit, the price. Whatsoever the law necessarily implies in a statute or in a contract is as much part and parcel thereof as if expressly stated therein. So that by the terms of the charter of the respondent company its right to fix the price of its product was as much a part of its charter as if it had been in terms set forth in section 5 of the original act of incorporation."

The words of the grant in the case at bar, "power * * * to provide for supplying the city with water," are clear and unambiguous and, in my opinion, admit of no other reasonable construction than that they were intended to confer upon the city of Los Angeles, so far as concerns the means necessary to supply
145 the city with water, powers as ample as the legislature itself

possessed. This delegation of power to the city was not, of course, a relinquishment by the legislature of its control over the subject. The legislature could at any time revoke the power delegated to the city and provide directly through agencies of its own selection for supplying the city with water, provided such revocation or provision should not impair any previously vested rights.

In Illinois Trust and Savings Bank *v.* City of Arkansas City, *supra*, the words of the grant were: "Full power and authority to contract for and procure water works to be constructed for the purpose of supplying the inhabitants of such cities with water." While this phraseology is more diffuse, the grant it makes is neither clearer nor broader than the grant in the case at bar, and with reference to the former the court of appeals for the eighth circuit said:

"The powers granted to this city by the legislature of the State of Kansas to contract for and procure water works are plenary and unlimited save by the duty to exercise them with reasonable discretion, and it is not the province of the court to contract or clip the legislative grant."

Grants of this power have been upheld, in some well-considered cases, on the ground that the power is a business or proprietary power, as distinguished from a governmental or legislative power (Illinois Trust and Savings Bank *v.* City of Arkansas City, *supra;* Cincinnati *v.* Cameron, 33 Ohio St. Rep., 336, 367; Safety Insulated Wire & Cable Co. *v.* City of Baltimore, 66 Fed. Rep., 140; State *v.* Mayor, etc., of City of Great Falls, 49 Pac. Rep., 15, 21; 1 Dillon on Municipal Corporations, sec. 27). In the first of these cases the court says:

"In contracting for water works to supply itself and its
146 inhabitants with water, the city is not exercising its governmental or legislative powers, but its business or proprietary powers. The purpose of such a contract is not to govern its inhabitants, but to obtain a private benefit for the city itself and its denizens. 1 Dill. Mun. Corp., § 27; City of Cincinnati *v.* Cameron, 33 Ohio St., 336, 367; Safety Insulated Wire & Cable Co. *v.* City of Baltimore, *supra*, and cases cited under it."

In Cincinnati *v.* Cameron the court says:

"The power given to a city to construct sewers is not a power given for governmental purposes, nor is it a public municipal duty imposed upon the city like that of keeping streets in repair, but it is a special legislative grant to the city for private purposes. The sewers of the city, like its works, for supplying the city with water are the private property of the city; the corporation and its corporators—its citizens—are alone interested in them; the outside public, as people of the State at large, have no interest in them as they have in the streets of the city, which are public highways. Detroit *v.* Corey, 9 Mich., 165."

If, however, it be conceded, contrary to these authorities and as claimed by defendants, that the power of a city to regulate water rates is legislative or governmental the city may, by contract, abridge such power under an implied as well as an express legislative grant,

and this rule is recognized by many of the authorities upon which defendants rely. Thus, in one of them it is said:

"Powers are conferred upon municipal corporations for public purposes, and as their legislative powers cannot, as we have just seen, be delegated, so they cannot without legislative authority, express or implied, be bargained or bartered away. Such
147 corporations may make authorized contracts, but they have no power as a party to make contracts or pass by-laws which shall cede away, control, or embarrass their legislative or governmental powers or which shall disable them from performing their public duties" * * * (1 Dillon on Municipal Corporations, 4th edition, sec. 97).

It is worthy of note that the words "without legislative authority, express or implied," are not found in the first three editions of Judge Dillon's work. I take it, therefore, that a review of the subject made by him subsequent to said editions satisfied him that the governmental as well as business powers of a city could be abridged by contract if there were legislative authority therefor, and that such authority could arise by implication as well as by express grant. See also State *v.* Cincinnati Gas-light, etc., Co., 18 Ohio St. Rep., 293; Santa Ana Water Co. *v.* Town of San Buenaventura, *supra;* Illinois Trust and Savings Bank *v.* City of Arkansas City, *supra.*

As already stated, most, if not all, of the cases cited by defendants on this point—some of which are specially referred to below—relate to exclusive franchises, and in many of these cases the franchises are denied, not because they involve the exercise of governmental functions, but upon the grounds that they are monopolies and unnecessary to the accomplishment of the general objects of the grants, and herein lies the wide distinction between such cases and the case at bar.

In Jackson, etc., Co. *v.* Interstate, etc., Co., 24 Fed. Rep., 308, '9, it is said:

"Again, exclusiveness of occupation is not necessary to the full performance of a street railroad company of all its functions. The running of a street railroad on one street is in no manner interfered with by the running of a similar road on a parallel street.
148 Doubtless the profits of the one will be increased if the other is stopped. Monopoly implies increase of profits; but the question of profits is very different from that of the unimpeded facilities for transacting business. The latter may be granted without any exclusiveness, and power to grant all facilities for transacting business does not imply power to forbid all others from transacting like business. Even where a charter is granted by the legislature directly it grants no exclusive right unless the exclusiveness is expressly named. As said by Judge Dillon, 2 Mun. Corp., § 727:

"'But a legislative grant of authority to construct a street railway is not exclusive unless so declared in terms, and therefore the legislature may at will and without compensation to the first company authorize a second railway on the same streets or line unless

it has disabled itself by making the first grant irrepealable and exclusive.'

"And if a direct grant from a legislature carries no implication of exclusiveness, why should it be presumed that the legislature intended to vest in a city the power to give exclusive privileges when it has in terms granted no such power? Will the power to create monopolies be presumed unless it is expressly withheld? That would reverse the settled rule of construction, which is that nothing in the way of exclusiveness or monopoly passes unless expressly named."

Again, in another case relied on by defendants the grant of an exclusive right of selling to the city of Helena all water required by it, etc., for the period of twenty years was held to be void on the ground, among others, that it was a monopoly, the court saying:

"Then, the power to provide the city with water by making a proper contract with some person to erect water works and sell water to the city being conceded, the next question that pre-
149 sents itself is as to the power of the city to make this particular contract. Is the present such a contract as to be beyond the power of the city council to enter into so as to bind the municipal corporation? Does this contract create a monopoly? For, if it does, it goes beyond the power of a city council. Monopolies may be created, but they must be called into being by the sovereign power alone. A city council has no authority to grant to any person a monopoly, even where no express prohibition is found in the charter or other acts of the legislature. Monopolies are contrary to the genius of a free government, and ought not to be encouraged by the people or countenanced by the courts except when expressly authorized by positive law."

Not only does the court rest its decision upon the ground that the franchise was a monopoly, but it expressly recognizes the power of the city to abridge, by contract, in some degree its governmental functions, as follows:

"But it is insisted by the council for respondents that the making of this contract, or the passing of this ordinance, is *ultra vires*, because it ties up and embarrasses the functions of future councils. Every ordinance in the nature of a contract would do this to some extent, and unless the contract entered into by means of this ordinance should bind the city corporation for an unreasonable time, this objection would not be fatal."

The grant of power to the city in that case was as follows: "The city council shall have power to provide the city with water, erect hydrants and pumps, build cisterns, and dig wells in the streets for the supplying of engines and buckets, * * * to provide
150 for the prevention and extinction of fires." (Davenport *v.* Kleinschmidt, 13 Pac. Rep., 254.)

The court then holds that under the peculiar terms of the contract in question twenty years was an unreasonable time for it to continue. This feature of the case, however, I will consider in a subsequent and more appropriate connection.

In Illinois Trust & Savings Bank *v.* City of Arkansas City, 76 Fed. Rep., 279, the court says:

"This city, then, had the power to grant to the gas company the privilege of using its streets for water pipes, and it had power to rent hydrants of that company when this contract was made. For the purposes of this discussion we shall concede that it had no power to make the privilege of the gas company to use its streets exclusive, because such a grant tends to create a monopoly. The general rule is that the legislature alone has the power to make exclusive grants of this character, and that this authority does not vest in the municipality unless it is expressly granted to it by its charter."

In Omaha Horse Railway Co. *v.* Cable Tramway Co., 30 Fed. Rep., 328, the monopoly feature of the grant there under discussion was referred to thus:

"This rule of construction against the grantee, which applies in all legislative grants, obtains with the greater force in a case like the one at bar, where the grant claimed is not merely the right to do something, but of a right to exclude all the rest of the public from doing that thing. He who says that the State has given him a franchise, a right to do that which without that franchise he could not do, will be compelled to show that the franchise, the right claimed, is within the terms of his grant. Much more strenuous must be the demand upon him for clear and explicit language in his grant when he claims that a part of it is not merely the
151 franchise, the right to do, but also the right to exclude all others of the public from exercising the same right, and the State, as the representative of the public, from according the same right to another."

In Saginaw Gas-light Co. *v.* City of Saginaw, 28 Fed. Rep., 529, in considering the question whether the common council of that city had power to confer an exclusive franchise upon the plaintiff to light its streets with gas for thirty years, the court said:

"That the State in its sovereign capacity may grant a monopoly of this description, and that such monopolies will be protected against a subsequent conflicting grant has lately been settled by the Supreme Court in New Orleans Gas Co. *v.* Louisiana Light Co., 115 U. S., 650; S. C., 6 Sup. Ct. Rep., 252, and Louisville Gas Co. *v.* Citizens' Gas Co., 115 U. S., 683; S. C., 6 Sup. Ct. Rep., 265. But whether under a charter simply authorizing a municipal corporation 'to cause its streets to be lighted' it may grant an exclusive privilege of this description for a term of years is a widely different question. Bearing in mind that the powers of the municipality are strictly limited by its charter, it is needful to inquire whether the grant of an exclusive franchise is a proper and reasonable method of exercising its authority to furnish gas to its inhabitants. We think it entirely clear that the city is not bound to manufacture and furnish the gas itself, but may contract with any individual or company for the city, and as an incident thereto may authorize the use of its streets for laying pipes and mains. * * *

"It is clear, however, that there is no authority expressly given

to confer upon any corporation an exclusive right to occupy its streets for a number of years. * * *

"The common law of England declares that monopolies cannot emanate from the crown and can only be conferred by act of
152 Parliament (Bac. Abr., tit. 'Monopoly'), and a by-law which creates a monopoly is void. (Jac. Law Dict.)

"The great weight of authority in this country is in the same direction," etc.

In State *v.* Cincinnati Gas-light, etc., Co., 18 Ohio St. Rep., 293, the court says:

"Now, we concede that the streets of a city may be appropriated to authorized purposes promotive of the convenience and welfare of its inhabitants, and not substantially interfering with the public easement or right of travel; and from partial appropriations of this character rights of private property may arise which cannot rightfully be disturbed. But when it is sought to couple with such partial appropriation a stipulation that no further use of unoccupied portions of the streets shall be thereafter permitted or made for similar purposes, this is not the exercise of the power of appropriation, but an attempt to prohibit its exercise; and when the effect is to create a private monopoly, the power of the city council thus to divest itself of authority conferred upon it as a public agent for the benefit of others must be clearly shown."

In that case, however, the court holds that even the power to grant an exclusive franchise may arise by implication as well as from express terms, the language of the court being as follows:

"And, assuming that such a power may be exercised directly, we are not disposed to doubt that it may also be exercised indirectly, through an agency of a municipal corporation clearly invested for police purposes with the necessary authority. But we have referred to these authorities as our justification for saying that when
153 a franchise so far in restraint of trade and so pregnant with public mischief and private hardship is drawn in question, and is claimed to be derived through a municipal ordinance or contract, the power of the municipal authorities to pass the ordinance or enter into the contract must be free from doubt. It must be found on the statute book in express terms or arise from the terms of the statute by implication so direct and necessary as to render it equally clear."

This review of defendants' citations shows that in each case the franchise claimed was denied not because it was legislative or governmental in its nature, but because it was a monopoly, and in the first case for the additional reason that the franchise was not necessary to the accomplishment of the general objects of the grant. Neither of these reasons apply to the case at bar. The abridgment of the right of the city to regulate water rates does not create a monopoly and is a necessary means to the proper exercise of the general power to supply the city with water.

Defendants further insist that the rates fixed by the ordinance of 1897 are not unreasonable, or, in other words, that they allow to complainants a fair income on their investment.

The question, however, as to the reasonableness or unreasonableness of the rates fixed by the ordinance is not here involved. The only question, so far as concerns the matter of reasonableness, is whether or not the contract of July the 22nd, 1868, was reasonable, and in determining this question the contract should be construed not in the light of developments that have since been made, but with reference to the conditions which surrounded the parties at the date of the contract.

The fact that said contract, because of the rapid growth of the city of Los Angeles, has proved largely remunerative to the complainants does not make the contract unconscionable. On
154 this point the following extract from the case of Illinois Trust and Savings Bank *v.* City of Arkansas City, *supra*, may be aptly quoted:

"It cannot but be clear to all who are familiar with the condition of cities of the second class—cities whose population was between 2,000 and 15,000—in the State of Kansas in 1872, when this grant was made, that it was not the intention of the legislature of that State to limit the terms of these contracts to the single year during which the terms of office of the members of the city councils continued. The cities were young and poor, but they were ambitious and sanguine. They did not have the ready money to construct the water works which the health and comfort of their inhabitants required. It is hardly possible that any individual or corporation could have been induced to expend the thousands of dollars required to construct such works as have been built in this city in consideration of the right to use the streets of the city for that purpose and of the promise of rental for its hydrants for the limited term of a single year. These facts the members of the legislature must have known, and they undoubtedly granted this plenary power to contract for the very purpose of enabling the cities to procure a supply of water for their inhabitants by grants of privileges to private parties to use their streets for that purpose for a reasonable term of years and by covenants to pay rentals for hydrants for a like term. In any event, the legislature made this grant, and it thereby vested in the mayor and council of the city the right to make such contracts for such terms as in their discretion they thought proper." (Illinois Trust and Savings Bank *v.* City of Arkansas City, 76 Fed. Rep., 283.)

In another case it has been held that "where a city with
155 a population of 5,000 and an assessed valuation of property of two and a quarter millions of dollars contracts with a person, giving him the exclusive privilege of laying water mains in the city for 30 years and providing that he shall furnish the city with 50 fire-hydrants, for each of which it shall pay him a rent of $80 *dollars* per year for the 30 years, with a stipulation that at the end of 10 years it may, at its option, buy the water works at a price commensurate with the productive value thereof, the contract will not, after the city has enjoyed the benefit of it for over 10 years, be held so unreasonably oppressive or contrary to public policy as to be

void." (Fergus Falls Water Co. *v.* City of Fergus Falls, 65 Fed. Rep., 586.)

It is noticeable that in the case last cited the city of Fergus Falls was paying $80 per year for each hydrant, while in the case at bar the city of Los Angeles gets the use of the hydrants, now 500 in number, free of charge.

In Davenport *v.* Kleinschmidt, *supra*, where the court held that twenty years was an unreasonable period for the continuance of the contract, the reasons for the ruling are thus stated:

"Is 20 years a reasonable time? The city charter provides for the election of the mayor and half the aldermen in April of each year. City charter, art. 4, § 1. The complaint alleges the taxable property of the city of Helena to be not more than $5,000,000; that the bonded indebtedness of the city amounts to $19,500; that the floating debt, in outstanding warrants, amounts to $15,000. Four per cent. of the taxable property of the city would amount to $200,000. The charter permits the levy of taxes to the extent of three mills on the dollar for general purposes and the same for fire department purposes. City Charter, p. 25, amend. 1885.
156 On the present valuation these levies might amount to $15,000 each if the the taxing power was exerted to the limit.

"The city of Helena was chartered in 1881. Twenty years ago it was a mining camp on the banks of Last Chance gulch, containing a few hundred people. The last official census of the city, taken in 1880, shows a population of not more than 4,000. Reliable data place the present population at about 10,000. The ordinance provides that Woolston shall receive for the water running through each of the first 150 hydrants provided for $20 per year out of the general fund and $80 per year out of the fire department fund, being $100 for each hydrant altogether, and amounting in the aggregate for the 150 hydrants to $15,000 per annum. Then, as the mains are extended, additional hydrants are required to be erected, and for these Woolston is to receive $13 per year out of the general fund and $52 per year out of the fire department fund, making in the aggregate $65 per year for each additional hydrant. If ten miles more of pipe should be laid, at least 100 additional hydrants must be paid for, at an annual cost of $6,500. If the whole cost of the 150 hydrants were to be paid out of the fire department fund it would take every dollar which could be placed into that fund at the present valuation. This ordinance is designed to be irrepealable and unchangeable for the period of 20 years. We have a right to consider all these things in determining whether or not 20 years is a reasonable time for such a contract to run. Under all the circumstances indicated, we cannot consider that the city council has the right to bind such a city as Helena by such a contract for so long a period. We are not called upon to indicate what would be a reasonable time for which the city might make such a contract, if at all. It is sufficient for us to say in this case that 20 years is
157 not a reasonable time. It is useless to argue that if the council has power to bind the city for 20 years it has the power to bind it for 100 or 1,000 years; or, on the other hand, to say that

if the council cannot bind the city for 20 years it cannot do so for 1 year or 1 month. Such assertions of extreme cases may answer for illustration, but as arguments they are fallacies which cannot bear the strong light of reason" (Davenport *v.* Kleinschmidt, 13 Pac. Rep., 256).

Thus it will be seen that the twenty-year limit in the contract was held unreasonable mainly, if not wholly, because of the expenditures which the city was annually incurring for hydrants. Here there is no such expenditure. If the city of Los Angeles, however, was paying for its hydrants at the lowest rate above mentioned, $65 per year for each hydrant, the expenditures on this account, there being 500 hydrants, would amount in the aggregate to $32,500 per annum. The case last cited, therefore, does not support, but is against, defendants' contention, for, according to the theory of that case, the large benefits which the city of Los Angeles has enjoyed under the contract of July 22nd, 1868, in the way of free water and hydrants for municipal uses, saves the contract, if there were nothing else to do so, from the charge of unreasonableness.

See also McBain *v.* City of Fresno, 112 Cal., 159–169, and State *v.* Mayor, etc., of the City of Great Falls, 49 Pac. Rep., 15–21.

Defendants further contend that the limitation in said contract as to water rates is void because of the act of May the 3rd, 1852 (Statutes of California, 1852, page 171). Said act, however, is not applicable to the case at bar, for the reason that Griffin, Beaudry, and Lazard, at the date of said contract, were not incorporated under that or any other act. The following extract from the case of Santa Ana Water Company *v.* Town of San Buenaventura, *supra*, is directly in point here:

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"A statute of the State, approved May 3, 1852 (St. 1852, p. 171), providing for the incorporation of water companies, declared, in its third section:

"'This act shall not give to any company the right to supply any city with water unless it shall be previously authorized by an ordinance, or unless it be done in conformity with a contract entered into between the city and the company. Any contracts hereafter so made shall be valid and binding in law, but shall not take from the city the right to regulate the rates for water, nor shall any exclusive right be granted, by contract or otherwise, for a term exceeding twenty years.'

"By this act it was declared, as will be observed, that no contract entered into between a city and a company incorporated under the provisions of the act should 'take from the city the right to regulate rates for water.' That provision had no application to Arnaz and his associates, for the reason that they were not incorporated under that or any other act" (Santa Ana Water Co. *v.* Town of San Buenaventura, 56 Fed. Rep., pp. 348–'9).

But it is insisted by defendants that even if the contract in question does not violate said act of 1852, it is inconsistent with the policy of the State as manifested in said act, citing 1 Dill. Mun. Corp., sec. 319.

Defendants, it seems to me, mistake the scope and purpose of said act of 1852. Said act was, as shown by its title, simply "an act to provide for the incorporation of water companies," and does not purport to abridge the powers of municipal corporations except in their dealings with the private corporations created under
159 said act. The power of municipal corporations in their dealings with individuals are unaffected by said act of 1852. Defendants' claim, therefore, that it was the policy of the State, as shown in said act, to apply its provisions to individuals when, by a familiar rule of construction, individuals are excluded therefrom is untenable. This is well illustrated by section 31, article 4, of the constitution of California of 1849, and the judicial interpretation thereof. That section prohibits the granting of franchises by special legislation to private corporations, yet the supreme court of the State holds, as hereinafter fully set forth, that grants of franchises to individuals are not within the prohibition.

It is insisted by defendants that the case at bar is distinguishable from that of Santa Ana Water Company *v.* Town of San Buenaventura, *supra*, and comes within the reasoning in San Francisco *v.* Spring Valley Water Works, 48 Cal., 493, because Griffin and his associates procured their contract with the intention of forming a corporation to carry out the same, and that soon thereafter, pursuant to said intention, the Los Angeles City Water Company, one of the complainants herein, was organized by them.

Now, I do not think that the power of the city to enter into the contract or the validity of the contract can be affected by the fact that the assignors of the water company, at the time they procured the contract, intended to assign it to a corporation thereafter to be formed. Suppose that, after the making of the contract, Griffin, Beaudry, and Lazard had changed their purposes and concluded to carry out the contract as individuals, and had actually done so, could it be contended that the contract, if today held by them, would be invalid because when they procured it they purposed its assignment to a contemplated corporation? No one, I think, would so contend.

160 The case of San Francisco *v.* Spring Valley Water Works, *supra*, is widely different from the case at bar. Here the contract was not conditioned upon the individuals to whom the franchise was granted (Griffin and his associates) organizing themselves into a corporation, while in San Francisco *v.* Spring Valley Water Works a condition similar to the one indicated did exist and was the essential ground of the decision, as shown by the following extract from the opinion of the court:

"This brings us to the consideration of the Ensign act, so called. The first seven sections confer upon Ensign and his associates certain privileges and impose upon them certain duties in respect to furnishing the city and county of San Francisco with water for the extinguishment of fires and other municipal uses. Section eight, already quoted, provides that 'This act shall not take effect unless the parties named in section one shall, within sixty days after its passage, duly organize themselves in conformity with the existing

laws regulating corporations now in force in this State.' The grant therefore was not to take effect until Ensign and his associates had become a corporation under existing laws. It took effect as a grant not to Ensign and his associates as private individuals, but to the corporation when formed. It was an attempt by the legislature to confer by special grant upon a private corporation about to be formed certain peculiar privileges and to subject it to certain duties not common to other corporations formed under the same general law. For the reasons already stated this was not within the constitutional power of the legislature. When Ensign and his associates became a corporation under the general law they took only such
rights as were derived from that law and were subject only
161 to such duties as it imposed. The legislature by special act
could not increase or diminish either" (San Francisco *v.* Spring Valley Water Works, 48 Cal., 514).

Nor does the present case come within the implied suggestion of the court in San Luis Water Co. *v.* Estrada, 117 Cal., 168, that the intention of individuals to organize a corporation to carry out the object of a franchise granted to them, other circumstances concurring, might invalidate the grant, for the reason that it does not appear in the case at bar that the city council acted with reference to such intention or had any knowledge of its existence, or that the contract was made for the purpose of evading the constitution. There is no intimation by the court in the case of the San Luis Water Co. *v.* Estrada that a mere intention on the part of the grantees undisclosed to the granting party could invalidate the grant. What the opinion in that case does suggest, and even that was outside the facts, is that if the individuals to whom a franchise is granted intend at the time of the grant to form a corporation to carry out their contract with the city and this intention is known to and acted upon by the city and the contract is made for the purpose of evading the constitution, then it is invalid. None of these circumstances, however, except the intention of the individuals, are shown to have existed here, while there are strong reasons for presuming that there could not have been any intention to evade the constitutional inhibition against grants of franchises to private corporations by special legislation. San Francisco *v.* Spring Valley Water Works, 48 Cal., 515, the first case to hold that the provision of the constitution which inhibited the creation of private corporations
by special legislation included the grant of a particular
162 franchise to a corporation already existing, was not decided
until July, 1874, more than six years after the date of the contract and more than four years after the ratifying act. That decision, therefore, could not have in any way affected the parties to said contract. State Telegraph Company *v.* Alta Telegraph Company, 22 Cal., 398, which, contrary to the ruling in the Spring Valley Water Works case, held that the grant of a private franchise to an existing corporation was not repugnant to the constitutional inhibition against the creation of private corporations by special legislation, was decided in July, 1863, which was five years prior to said contract, and it is reasonable to presume that the parties to said con-

tract accepted that decision as correct and final, and therefore there was no occasion for any purpose or effort to evade the constitution.

Defendants further contend that since the Los Angeles City Water Company was incorporated, subsequent to the act of April the 22nd, 1858 (Statutes of California, 1858, p. 218), providing, among other things, that water rates should be fixed by commissioners, of whom two were to be appointed by the water company and two by the city, and if they could not agree a fifth to be selected by the sheriff, and since the constitutional provision, hereinbefore quoted, prescribing a different mode of establishing water rates from that contained in the act of 1858, was in effect an amendment of said act (Spring Valley Water Works *v.* Schottler, 110 U. S., 362), binding upon corporations previously organized, said company can have no right to collect rates other than those established in the mode prescribed by the constitution, and that the fact of said company being the assignee of a contract which gave the grantees and their assigns the right in question cannot alter the case, as the company had no power to acquire such a right, quoting the following from People *v.*
163 Stanford, 77 Cal., 378–'9:

"The defendant The Potrero and Bay View Railroad Company claims the right to maintain a railroad and to run cars thereon upon the streets described in the answer, to collect fares, etc., under and by virtue of the act of April 2, 1866, purporting to grant to certain persons (alleged to be assignors of the Potrero and Bay View Company) the right to lay down and maintain an iron railroad along and upon certain streets, and upon acts amendatory thereof and supplemental thereto. The act of 1866 was not a grant of a mere proprietary interest in lands, but was if valid a grant of a franchise. The constitution of 1849 provided, 'Corporations may be formed under general laws, but shall not be created by special act,' etc. (art. 4, sec. 31). The true construction of that constitutional provision is that private corporations must derive their powers from general laws and not from special statutes (San Francisco *v.* Spring Valley Water Works, 48 Cal., 513). It follows that if the grant of the franchise of laying down and maintaining a railroad within the limits of San Francisco to certain persons therein named was a valid and operative grant, yet the defendant corporation acquired no right to the franchise by assignment from such persons. To uphold such assignment would be to give to the particular corporation through it a franchise which other corporations of the same class could acquire only by grant from the supervisors, as provided in the general laws (San Francisco *v.* Spring Valley Water Works, *supra*)" (People *v.* Stanford, 77 Cal., 378–'9).

Defendants' counsel, in their examination of the case last cited, evidently failed to observe the fact that the clause quoted by them and on which they rely was from the opinion of a depart-
164 ment, and that said clause was expressly overruled on rehearing by the court in bank as follows:

"As to other questions arising upon the answer, they relate to the special answer to the second count of the complaint, which count of the complaint was held in the former opinion to be bad.

We adhere to that opinion so far as it relates to these questions, except so far as it holds that a duly organized corporation cannot take an assignment from its lawful owners of a franchise to lay down and maintain a street railroad. This is based upon the constitutional provision that 'corporations may be formed under general laws, but shall not be created by special act' (art. 4, sec. 31). This provision applies to the formation or creation of corporations and to the powers directly conferred upon them by legislative enactment, and cannot, in our judgment, be construed as prohibiting the assignment of a franchise to a legally created corporation by persons having the lawful right to exercise and transfer the same" (People *v.* Stanford, 77 Cal., 371).

The other case cited by defendants in this connection, Spring Valley Water Works *v.* Schottler, *supra*, is directly against their contention, that the Los Angeles City Water Company could not acquire from individuals a contractual right to collect water rates other than those fixed in the mode prescribed by its charter. This is shown so clearly by Judge Ross in Santa Ana Water Co. *v.* Town of San Buenaventura, 56 Fed. Rep., 347–'8, already mentioned, that I quote from his opinion as follows:

"In the case entitled Spring Valley Water Works *v.* Schottler, 110 U. S., 347; 4 Sup. Ct. Rep., 48, the question arose whether the right conferred upon water companies organized under that act to participate in the fixing of the rates to be charged for water furnished by them constituted a contract protected by the
165 Constitution of the United States against impairment by subsequent action of the State. The court held that the provision in the statute of 1858 in respect to the fixing of water rates was but one of the corporate privileges granted by the State; that it was part and parcel of the charter of the corporation, and nothing else, and therefore fell within the power conferred by section 31 of article 4 of the constitution of the State, in existence when the act was passed to alter or repeal it. Chief Justice Waite, in delivering the opinion of the court, said:

"'The organization of the Spring Valley Company was not a business arrangement between the city and the company as contracting parties, but the creation of a new corporation to do business within the State and to be governed as a natural person or other corporations were or might be. Neither are the charter rights acquired by the company under the law to be looked upon as contracts with the city and county of San Francisco. The corporation was created by the State. All its powers came from the State, and none from the city and county. As a corporation it can contract with the city and county in any way allowed by law, but its powers and obligations, except those which grew out of contracts lawfully made, depend alone on the statute under which it was organized and such alterations and amendments thereof as may from time to time be made by proper authority. The provision for fixing rates cannot be separated from the remainder of the statute by calling it a contract. It was a condition attached to the franchises conferred

on any corporation formed under the statute and indissolubly connected with the reserved power of alteration and repeal.'

"It will be observed that while the court held that each and every right conferred by the statute under which the company was incorporated was a part and parcel of its charter, and that only, and therefore subject to alteration or repeal, the right of any company to contract with the city or town in any way allowed by law was expressly recognized and declared."

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Judge Ross later, at page 357, after referring to People *v.* Stanford, *supra*, announces his conclusion on the point under consideration as follows:

"The construction placed upon the constitution of the State by the highest court in existence under it is binding on this court, and under the construction thus adopted by the supreme court of California it is obvious that the complainant corporation was competent to take by assignment whatever rights the contract of January 4, 1869, conferred upon Arnaz and his associates and that were assignable by them."

Complainants urge another ground in support of the contract, namely, that if it was made without original authority on the part of the city it has been subsequently validated by the act of April the 2nd, 1870, which, so far as material here, is as follows:

"SECTION 1. The following acts, contracts and ordinances of the mayor and common council of the city of Los Angeles are hereby ratified and confirmed: The contract and lease for the care and maintenance of the Los Angeles City water works, entered into and made between the mayor and common council of the city of Los Angeles, on the one part, and John S. Griffin, Prudent Beaudry and Solomon Lazard, on the other part, dated the twentieth (20th) day of July, eighteen hundred and sixty-eight (1868); and also the ordinance confirmatory of the same, passed July the twenty-second (22d) eighteen hundred and sixty-eight (1868) which contract and ordinance are recorded in the office of the county recorder of Los Angeles county, in Book One of Miscellaneous Records, pages four hundred and twenty-eight (428) to four hundred and thirty-one (431) * * * " (Statutes of California, 1869–'70, pp. 635–'6.)

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Defendants argue that the effect of said act, if operative, would be to confer a franchise on the Los Angeles City Water Company, and therefore the act is violative of that provision of the constitution of the State then in force prohibiting the creation of private corporations by special act, citing Turnpike Co. *v.* Cole, 51 Cal., 381; San Francisco *v.* Spring Valley W. W., 48 Cal., 493, and other cases. The provision of the constitution referred to, section 31 of article 4, is as follows:

"Corporations may be formed under general laws, but shall not be created by special act, except for municipal purposes."

This argument of defendants seems to me to be unsound. Assuming, for the purposes of said argument, that the city of Los Angeles was not originally authorized to make the contract of July the 22nd, 1868, still I think that the equivalent of such authority

was supplied by said act of April the 2nd, 1870, and said contract thereby made as valid as it would have been had full authority existed from the outset. Whatever a legislature may originally authorize it can, if the constitution under which it exists interposes no obstacle, subsequently ratify, and such ratification is equivalent to an original grant of power, operative by relation as of the date of the thing ratified. This, according to all the authorities, is the theory and effect of a ratifying act.

"Ratification, as it relates to the law of agency, is the express or implied adoption of the acts of another by one for whom the
168 other assumes to be acting, but without authority, and this results as effectually to establish the duties, rights, and liabilities of an agency as if the acts ratified had been fully authorized in the beginning" (Am. & Eng. Ency. of Law, 2nd ed., vol. 1, p. 1181).

"By the ratification of the unauthorized act the relation of principal and agent, with all the rights and duties incident thereto, is as fully established as if the authority had been conferred originally; the ratification relates back to the time of the performance of the acts, as expressed in the familiar maxim, *Omnis ratihabitio retrotrahitur et mandato priori æquiparatur*" (*idem*, p. 1213)—that is, "Every subsequent ratification has a retrospective effect, and is equivalent to a prior command" (1 Bouvier's Law Dictionary, p. 220).

Again, it has been said: "Until ratification, no liability to principal exists; but after ratification liability relates back to the time when the obligation was undertaken. In other words, to adopt the exposition of an eminent German commentator, when an agent undertakes an act for another person, the legal character of the act remains undetermined until such other person decides whether or no he will ratify. The contract is not void, but occupies the same position as one that is conditional. The third party contracting is bound from the time of the institution of the contract, and not merely from that of the ratification. The agent cannot, even in this intermediate period, release the third party from liability. *A fortiori* such release is not worked by the intervening death or other incompetency of the agent. * * *

"It has just been noticed that the principal, by the act of ratification, puts himself in his agent's place. From this it fol-
169 lows that the ratification acts retrospectively; and nowhere is this more unhesitatingly expressed than in the Roman law. The principal, so that law assumes, puts himself, by the ratification, back into the period in which the contract was executed. * * * (Wharton on Agency & Agents, secs. 76 & 77.)

In Grenada Co., etc., *v.* Brown, 112 U. S., 261, the court said:

"Since what was done in this case by the constitutional majority of qualified electors, and by the board of supervisors of the county, would have been legal and binding upon the county had it been done under legislative authority, previously conferred, it is not perceived why subsequent legislative ratification is not, in the ab-

sence of constitutional restrictions upon such legislation, equivalent to original authority."

Further, in the same case, the court quotes from Sykes *v.* Mayor, 55 Miss., 137, as follows:

"The idea implied in the ratification of a municipal act performed without previous legislative authority is, that the ratifying communicates authority, which relates back to and retrospectively vivifies and legalizes the act, as if the power had been previously given. Such statute is of the same import as an original authority."

See also Grogan *v.* San Francisco, 18 Cal., 590; McCauley *v.* Brooks, 16 Cal., 27; Ralphs *v.* Hensler, 97 Cal., 296; Zottman *v.* City of San Francisco, 20 Cal., 97, and Taylor *v.* Robinson, 14 Cal., 396.

From these authorities it results that the act of April the 2nd, 1870, is in legal contemplation the same as an act conferring power originally upon the city to make the contract with Griffin and his associates. Such, indeed, is the admission of defendants themselves in one paragraph of their brief, which is as fol-
170 lows:

"The act does not purport to vest in the city the power generally to make contracts with reference to providing a supply of water, but it attempts to confirm a particular contract, and is of exactly the same nature as if an act had been passed prior to the execution of the contract specially authorizing the city to enter into it."

Now, if the legislature had passed an act prior to the execution of the contract with Griffin, Beaudry, and Lazard specially authorizing the city to enter into said contract with said parties, such an act would have been valid, for, as already shown, the constitutional inhibition against the creation of private corporations by special legislation does not include grants of franchises to individuals.

My views in regard to that clause of the contract of July the 22nd, 1868, now under consideration, wherein the city agreed that it would not reduce water rates below those charged at the date of the contract, may be summarized thus: The City of Los Angeles, by virtue of the acts of April the 4th, 1850, and March the 11th, 1850, hereinbefore mentioned, which constituted the original charter of said city, was authorized to make said agreement; and, further, if such original authority did not exist, the agreement was validated by the ratifying act of April the 2nd, 1870.

These views render unnecessary the determination of the question of estoppel urged by complainants in their last brief.

II. The next defense to the suit is that there is no proof that the rates fixed by the ordinance of 1897 are less than the rates that were charged by the assignors of the water company at the date of the contract, July the 22nd, 1868.

The evidence adduced on this point consists of a report
171 made in 1870 of a joint committee of the city and water company appointed for the purpose of fixing water rates, which report states, in substance, among other things, that said committee

had established water rates, taking as a guide the rates charged in 1868 and a similar report made in the year 1874, which reports were accepted and approved by the mayor and council of the city of Los Angeles.

Defendants insist that the statements in said reports that the committee had taken as a guide the rates charged in July, 1868, are hearsay declarations of a committee of the council, not binding upon the city, citing 1 Dillon on Municipal Corporations, 4th edition, sec. 237, note on page 321–'2.

I have examined the cases below mentioned, which are among those cited by Judge Dillon in the note referred to, and find that, so far from sustaining, they antagonize defendants' contention. The rule, as I gather it from these cases, is this: A corporation, municipal as well as private, is bound by the declarations of its officers, where such declarations accompany and are explanatory of an act done by the officer in the scope of his authority (Glidden *v.* Unity, 33 N. H., 571; The County of La Salle *v.* William Simmons, 10 Ill., 516; Covington & Lexington R. R. Co. *v.* Ingles, 15 B. Monroe, 637; Gray *v.* Rollingsford, 58 N. H., 253; Toll-bridge Co. *v.* Betsworth, 30 Conn., 380; Grimes *v.* Keene, 52 N. H., 330).

The following extract is from Glidden *v.* Unity, *supra:*

"In all American courts, towns and other corporations are now to be considered as subject to the same presumptions and implications arising from their corporate acts or the acts of their agents, within the scope of their authority, without either vote, deed, or writing, as in the case of natural persons. *Vide* authorities collected in 2 Kent's Com., 290, and Ang. & Am. on Corp., 212. They
172 may be bound by the express promise of their agents or officers, acting within the scope of their authority, or such promise may be implied against the corporation from the acts of its agents within their authority, as in the case of natural persons. 8 Pick., 178; 2 Mason, 31."

In the County of La Salle *v.* Simmons, *supra*, the court says:

"The declarations of the commissioners respecting the payment of the money were not competent evidence against the county. They were not made by them while officially representing the county in this transaction. The declarations of an agent while engaged in the business of his principal, respecting a particular matter then depending, are a part of the *res gestæ* of the transaction and binding on the principal, but those made out of the course of the agency, when the agent is not acting for the principal in the particular transaction concerning which they are made, are mere hearsay and not admissible in evidence against the principal. 1 Greenleaf's Ev., §§ 113–'14; Story on Agency, §§ 134–'35."

In The Covington & Lexington R. R. Co. *v.* Ingles, *supra*, the court said:

"The doctrine is well settled that where the acts of the agent will bind the principal, there his representations and statements respecting the subject-matter will also bind him, if made at the same time and constituting part of the *res gesiæ*. Wherever what the agent did is admissible in evidence, then whatever he said on the subject

while doing it is also evidence against the principal. The court, therefore, did not err in admitting this testimony."

The committees above mentioned were in the performance of the duty expressly enjoined upon them by the city, and the
173 statements in their reports that they had followed the rates charged in July, 1868, were explanatory of the rates they established, and therefore said statements are clearly within the rule enunciated by the foregoing authorities. The same remark applies to the actions of the council and mayor in accepting and approving said reports.

Defendants further suggest that it does not appear from said statements whether the time referred to in July, 1868, was prior or subsequent to the 22nd day of that month, the date of the execution of the contract.

This suggestion, I think, is without force. The statement is that the committee established rates, etc., "taking as a guide as near as can be the charges and rates for domestic purposes charged in July, 1868." The obvious meaning of this statement is that the charges and rates therein referred to prevailed, not merely on a particular day in July, but during said month.

I hold that the reports above mentioned and the actions of the city council and mayor thereon show that the rates fixed in said report of 1870 were the rates charged by the assignors of the water company July the 22nd, 1868.

III. The next defense relied on is that complainants are not entitled to a decree annulling the ordinance of 1897, for the reason that complainants have violated and are still violating a material provision of said contract by taking from the Los Angeles river more than ten inches of water, measured under a four-inch pressure, citing Pomeroy's Eq. Jur., secs. 1341 and 1407.

Defendants admit that all the water taken from the river prior to October 20th, 1896, was taken with the consent of the city,
174 as provided in the contract, and it does not appear that a greater quantity was being taken when this suit was commenced, March the 4th, 1897, than was taken in October, 1896, but defendants claim that said consent was withdrawn on the date above mentioned, October the 20th, 1896.

If it be conceded, as claimed by defendants, which, however, I do not decide, that the provision of the contract limiting the quantity of water to be taken from the river without the previous consent of the city is sufficiently certain for enforcement, or, more specifically, that said quantity is ten inches measured under a four-inch pressure, still the consent of the city to the taking of a greater quantity once given cannot be withdrawn during the life of the contract, for the reason that large expenditures have been made by complainants in reliance upon such consent (Rhodes *v.* Otis, 33 Ala. Rep., 600; Woodbury *v.* Parshley, 7 N. H. Rep., 237; Lacy *v.* Arnot *et al.*, 33 Pa. St. Rep., 169; Russell *v.* Hubbard *et al.*, 59 Ill. Rep., 337; 45 Ga. Rep., 33; 4 C. E. Green (N. J.) Rep., 153; Williamston, etc., Co. *v.* Battle, 66 N. H. Rep., 546).

The rule enunciated in the foregoing citations has also been recog-

nized and applied in California (Flickinger *v.* Shaw, 87 Cal., 126; Grimshaw *v.* Belcher, 88 Cal., 217; Smith *v.* Green, 109 Cal., 228).

From the syllabus of the case last cited I quote as follows: "As a general rule, one who rests his claim to an easement on a verbal contract alone, unexecuted and unaccompanied by any other facts, has no rights thereto which he can enforce, yet where a parol license to take half the waters of a stream has been executed and investments have been made upon the faith of it the license is irrevocable" (Smith *v.* Green, 109 Cal., 228).

IV. Defendants further contend that complainants have
175 so acquiesced in the action of the council in the fixing of water rates as to estop them from maintaining the present suit, and also have been guilty of such laches in not sooner seeking an injunction against the infringement of their rights as is fatal to the relief they now seek.

This contention, in my opinion, is not well taken. So far from the action of the city council having been acquiesced in by the defendants, it has been the subject of repeated protests; but, even if the defendants had not protested, their acquiescence in ordinances establishing rates prior to the year 1896 would not be acquiescence in the ordinance of that year, for the obvious reason that the last-named ordinance made a greater reduction of rates than any previous ordinance. Without reference, however, to the facts that the ordinances of 1896 and 1897 made greater reductions than had been made in previous ordinances, it may be stated broadly that acquiescence in an ordinance passed one year cannot be acquiescence in an ordinance passed the succeeding year. The ordinances passed consecutively through a series of years, beginning, for instance, with 1880 and extending down to 1889, were not one continuous act infringing complainants' rights; but each ordinance was a separate and distinct infringement, and therefore acquiescence in one does not estop the defendants from assailing another.

V. Defendants further contend that if the limitation in the contract of July the 22nd, 1868, upon the power of the city to fix water rates be valid the ordinance of 1897 is void upon its face and does not throw any cloud upon complainants' rights under said contract nor expose their property to forfeiture, and therefore complainants have adequate remedies at law by actions for collections of water rates, citing Spring Valley Water
176 Works *v.* Bartlett, mayor, *et al.*, 16 Fed. Rep., 615; Alpers *v.* City and County of San Francisco, 32 Fed. Rep., 503, and Murphy *v.* East Portland *et al.*, 42 Fed. Rep., 308.

This contention is erroneous in its assumption that the ordinance referred to is void upon its face, and, besides, is fully answered by the decision on demurrer in the case of Santa Ana Water Co. *v.* Town of San Buenaventura, *supra*. That case, so far as concerns the question of equitable jurisdiction, is in all essential respects similar to the case at bar. This is not true, however, of any of the three cases cited by defendants in this connection. Moreover, two of said cases, Alpers *v.* City and County of San Francisco, *supra*, and Murphy *v.* East Portland *et al.*, *supra*, so far from supporting, are

in one respect against defendants' contention. They hold, it is true, that the judiciary will not restrain the passage by a municipal corporation of a proposed ordinance upon a matter within the legislative discretion of such corporation, but they at the same time expressly recognize the competency of the courts, after the passage of such an ordinance, to annul or arrest its enforcement if it be unconstitutional.

The case mainly relied on by defendants, however, is that of Spring Valley Water Works *v.* Bartlett, mayor, *et al.*, *supra*, in which the court held that the proposed ordinance, whose adoption was sought to be restrained, if void at all, was void on its face, and that because everybody is presumed to know the law, no injury could result therefrom. The very essence of the rule there enunciated by Judge Sawyer is that the facts which nullify the ordinance must appear from its inspection, the theory being that since the facts appear upon the face of the ordinance and everybody is presumed to know the law applicable to such facts, the ordinance is a proclamation of its own nullity, and therefore cannot, in contemplation of
177 law, be productive of harm. Thus it will be seen that the rule is extremely technical, and Judge Sawyer himself, while enforcing it, as he in effect says, under the constraint of precedents, freely criticizes its severity. In order to justify the application of such a rule, every requirement of it should be fully met.

The reason why the ordinance in Spring Valley Water Works *v.* Bartlett, mayor, *et al.*, *supra*, if void at all, would have been void upon its face, was that the alleged contractual rights which it attempted to divest were granted by an act of the legislature of California—that of April the 22nd, 1858—which act, without pleading or proof, was within the court's knowledge. In the case at bar, however, the ordinance upon its face is valid, and its invalidity appears only when considered in connection with the contract of July the 22nd, 1868, and evidence showing what the water rates were at that date. While the court takes judicial notice of the ratifying act of April 2nd, 1870, still since the provisions of the contract of July the 22nd, 1868, are not embodied in said act, I am not sure that said provisions are matters of judicial knowledge, although such seems to be the ruling of the court, one of the justices dissenting, in Brady *v.* Page, 59 Cal., 52. Conceding, however, that the court will take judicial notice of all the provisions of said contract, still the one in question simply provides that water rates shall not be reduced below the rates then charged, without indicating what those rates were, and therefore the invalidity of the ordinance appears not upon its face, but only in connection with extraneous evidence of what the rates were in July, 1868, and for this reason complainants have adduced that evidence in the present case.

Defendants, in one of their briefs filed on demurrer, discussing the branch of the case now under consideration, say:

178 "The position of complainants' counsel seems to be that merely because they can contemplate the possibility that they are intended to be included within the provisions of the ordinances which are attacked here they can obtain the declaration of this

court that the acts of the council are void, irrespective of the question whether anything is ever done to infringe their rights of property or not.

"In other words, they claim that they are entitled to have the theoretical question of law, concerning the validity of their contract and the invalidity of the ordinance in question, determined by this court merely for their own satisfaction and without showing that any irreparable damage will ensue if the contract is valid and the ordinances are void.

"If the contract is void and the ordinances are valid, the complainants have no equity, and if, on the other hand, the contract is valid and the ordinances are void, then no damage can result to complainants, in contemplation of law, as the city is not doing or attempting to do anything that will in any way interfere with the property of complainants."

These comments do not correctly present the situation as disclosed by the pleadings and proofs. Under the circumstances of this case the ordinance itself is an infringement of complainants' property rights because it hinders them in the collection of that compensation to which they are entitled under the contract of 1868, and it is idle to say that relief cannot be had in equity, because the power and duty of the city ended with the passage of the ordinance, and no effort is now being made by the city for its enforcement. The ordinance, by reason of the severe pains and penalties which apparently fortify it, is daily, hourly, and momentarily enforc-
179 ing itself. The defendants must either submit to the terms of the ordinance or incur unusually onerous expenditures. It is reasonably certain that if, with the ordinance standing, they were to undertake the collection of rates in excess of those prescribed in the ordinance, they would be resisted at every point by the consumers of water, and thus be driven to innumerable actions at law. Besides, should they, in any instance, succeed in collecting, without an action, a higher rate than the ordinance prescribes, it is equally certain that they would thereby bring upon themselves protracted and heavy litigation, having for its object forfeiture of their entire system of works. Surely these injuries are irreparable, and actions at law, so far from being adequate to the exigencies of the situation, are, as complainants, in their brief, forcibly put it, mere mockeries of a remedy.

Defendants further suggest that the equitable relief prayed for by the complainants ought not to be granted, for the reason that a decree annulling the ordinance of 1897 could not become final until affirmed on appeal by a court of last resort, and that before this could take place the year for which the ordinance was passed will have expired.

This suggestion, in my opinion, is without force. If the views which I have already expressed are correct, complainants' rights under the contract of July the 22nd, 1868, cannot be adequately protected in any other way than by an annulment of said ordinance, and the possibility or probability that the enforcement of a decree to that effect may be postponed by an appeal until the ordinance

expires of its own limitation affords no reason for a denial by this court of the relief to which it finds the complainants entitled.

In San Diego Water Company *v.* San Diego, 118 Cal., 556,
180 which was a suit to annul a city ordinance, the trial in the lower court was had after the expiration of the year covered by the ordinance, and although the decision of the supreme court in bank was not rendered until more than six years thereafter, and specially adverts to the date of the trial in the lower court, the case was sent back for a new trial.

My conclusions are that the contract of July the 22nd, 1868, between the city of Los Angeles and the assignors of the water company, in so far as said contract provides that the city shall not reduce water rates below those charged at said date is valid, and that the ordinance of 1897, which was passed pursuant to constitutional and legislative requirements of the State of California, does reduce water rates below the minimum so prescribed, thereby impairing the obligation of said contract, and should be annulled.

A decree conformable to this opinion will be entered.

OLIN WELLBORN, *Judge.*

Endorsed: No. 734. U. S. circuit court, southern district of California. Los Angeles City Water Company *et al.*, complainants, *vs.* The City of Los Angeles *et al.*, defendants. Opinion of the court on final trial. Filed May 31, 1898. Wm. M. Van Dyke, clerk.

181 In the Circuit Court of the United States for the Southern District of California.

LOS ANGELES CITY WATER COMPANY ET AL., Complainants, *vs.* THE CITY OF LOS ANGELES ET AL., Defendants.	No. 734. Stipulation.

It is stipulated between the parties to this action as follows:

I.

That on the 22d day of July, 1868, the instrument set out in paragraph 4 of the bill of complaint herein and alleged by the plaintiffs to be a contract between the City of Los Angeles and J. S. Griffin, P. Beaudry, and Solomon Lazard, with respect to furnishing water to the inhabitants of the city of Los Angeles, and which said instrument bears date the 20th day of July, 1868, was executed by the parties thereto and was signed by the mayor of the city and president of the council under and by virtue of the authority given by an ordinance of said city approved July 22, 1868, and found in the volume of published ordinances of the city of Los Angeles issued in 1878, pages 128–137, and which said ordinance is made a part of this stipulation, and was recorded in the office of the county recorder of Los Angeles county on the 22d day of July, 1868, in

Book I of Miscellaneous Records, pages 428 *et seq.*, which said ordinance is in words and figures following, to wit:

After the title of the ordinance and enacting clause—

SEC. 1. "The contract hereinafter set forth and expressed, for the care, maintenance and improvement of the Los Angeles
182 city water works, wherein the corporation, known as the mayor and common council of the city of Los Angeles and their successors in office, is party of the first part, and John S. Griffin, Prudent Beaudry and Solomon Lazard are parties of the second part, upon the same being signed by C. Aguilar, mayor of said city of Los Angeles, who is hereby authorized, empowered and directed to sign the same for and on behalf of said corporation, known as the mayor and common council of said city of Los Angeles, as party of the first part, and John S. Griffin, Prudent Beaudry and Solomon Lazard, as parties of the second part, shall become valid and binding in all respects upon the parties thereto, said contract being in the words and figures following, to wit:

"JOHN KING, *President.*

"Approved July 22, 1868.

C. AGUILAR, *Mayor.*"

SEC. 2. "This agreement made and entered into this the 20th day of July, A. D. 1868, between the corporation known as the mayor and common council of the city of Los Angeles, and their successors in office, for and on behalf of said City of Los Angeles, party of the first part, and John S. Griffin, Prudent Beaudry, and Solomon Lazard, residents of the city and county of Los Angeles, State of California, party of the second part, witnesseth: That for and in consideration of the yearly payment of one thousand five hundred dollars per annum in gold coin, such payments to be made upon the first day of January of each year, after the signing and approval of this ordinance and contract, until the conclusion of
183 the term of this contract; and the further consideration that the said parties of the second part will surrender to the said party of the first part and cancel all claims they now hold against said city for repairs of said water works, and for damages amounting to the sum of eight thousand dollars, a little more or less; and for the further consideration of the said parties of the second part, shall make the following improvements about, in and upon the said water works, at their own proper costs and expenses, to wit: lay down in streets of said city twelve miles of iron pipes of sufficient capacity to supply the inhabitants of said city with water for domestic purposes, and shall erect or cause to be erected, one hydrant, to be used as a protection against fire, at one corner of each cross-street of said city, where the water pipes are now, or may hereafter be laid, by virtue of this contract, and shall, within one year from the approval of this contract and ordinance, erect, or cause to be erected, an ornamental fountain upon the public plaza of said city, of such design as the mayor and common council shall direct, at a cost not to exceed one thousand dollars; and shall, within two years from the approval of this contract and ordinance, construct,

at their own expense, such ditches, flumes, or erect such machinery in connection with said water works, as will secure to the inhabitants of said city a constant supply of water for domestic purposes, and shall construct reservoirs of sufficient capacity for that purpose. The said party of the first part, for the above considerations, and one dollar in hand paid, the receipt whereof is hereby acknowledged, hereby covenants and agrees with the said party
184 of the second part, their heirs, executors, administrators or assigns, to deliver and concede to the said parties of the second part, their heirs, executors, administrators or assigns, the exclusive use, control, possession and management of the Los Angeles city water works, so called; together with all and singular, the pipes, flumes, wheels and other personal property composing and appertaining to said water works, in any manner whatsoever, with all the rights, easements and privileges, and covenants as described and contained in a certain instrument of lease, executed by the mayor and common council of the said city of Los Angeles, of date October sixteenth, A. D. one thousand eight hundred and sixty-five, to Jean L. Sansevaine, for the period of thirty years from the signing and approval of this contract and ordinance, with the right to sell and distribute water for domestic purposes, and to receive the rents and profits thereof, for their own use and benefit, except as hereinbefore provided, hereby giving and granting the said parties of the second part, their heirs, executors, administrators or assigns, the right to lay pipes in any and all the streets of said city, and to dig and make all necessary excavations for that purpose, and the right of way through, upon and over land or streets belonging to the said city of Los Angeles, with the additional right to take water from the Los Angeles river at a point above or near the present dam; provided, always, that the said parties of the second part, their heirs, executors, administrators or assigns, shall at no time take from said river for the use of said water works more than ten inches of water, without the previous consent of the mayor and common council of said city; and that they will,
185 within sixty days from the date hereof, select the point from which the water will be taken from said river. The said party of the first part hereby covenant and agree with the said parties of the second part, their heirs, executors, administrators or assigns, that at the expiration of the period of thirty years from the execution of this instrument, they will pay to the said parties of the second part, their heirs, executors, administrators or assigns, the value of the improvements made in, about, and upon the said water works, in pursuance of this contract; the same to be ascertained by arbitration, in case the parties cannot agree upon the value thereof, the said party of the first part, and the parties of the second part, their heirs, executors, administrators or assigns, to choose one man each, and the two men thus chosen to select a third man, and the judgment of the three men thus selected shall be final in the premises. And the said party of the first part hereby covenant and agree to make no other lease, sale, contract, grant or franchise to any person or persons, corporation or company, for the sale or delivery of water

to the inhabitants of said city for domestic purposes during the continuance of this contract, always without prejudice to any rights already granted. And the said parties of the second part, their heirs, executors, administrators or assigns, hereby covenant and agree with the said party of the first part, that they will pay the sums of money at the time and in the manner hereinbefore mentioned and set forth, and cancel the claims hereinbefore mentioned, upon the signing and approval of this contract and ordinance by the proper parties thereto; that they will make the improvements herein-
186 before mentioned and set forth, in the following manner, to wit: That they will replace all the wooden pipes now belonging to said water works within one year from the signing and approving of this contract and ordinance, and that they will extend said iron pipes as fast as the citizens, desiring to be supplied with water for domestic purposes, will agree to take sufficient water to pay ten per cent. per annum interest upon the cost of extending such pipes through the streets now unsupplied with water. That they will, within one year from the date hereof, place a hydrant, to be used as a protection against fire, at one corner of one street at each of the cross-streets where the pipes are now laid down, and will erect hydrants at other street corners according to the terms of this contract, as fast as the pipes are extended through the streets of said city. That they will erect, or cause to be erected, an ornamental fountain upon the public plaza, of such designs as the mayor and common council shall direct, within one year from the date hereof; that they will furnish water for the public schools and city hospitals, jails, free of charge, when *then* the same are near the pipes, the city furnishing the necessary conduits for that purpose; that they will make all the improvements herein mentioned and set forth, and keep the same in repair at their own cost and expense, for the said period of thirty years, and return the said water works to the said party of the first part, at the expiration of the said period of thirty years in good order and condition, reasonable wear and the damage of the elements excepted, upon the payment to them of the value of the improvements made after the approval of this contract, to be ascertained as hereinbefore provided, and give a bond in the sum of
187 twenty thousand dollars, conditioned for the compliance by them of the conditions of this contract, to be approved by the mayor of said city; and will pay all State and county taxes assessed upon said water works during the said period of thirty years. Always provided that the mayor and common council of said city shall have, and do reserve, the right to regulate the water rates charged by said parties of the second part, or their assigns, provided that they shall not so reduce such water rates, or so fix the price thereof to be less than those now charged by the parties of the second part for water; provided that a certain contract of lease heretofore executed by the mayor and common council of said city to Jean L. Sansevaine, of said water works, of date October sixteenth, A. D. one thousand eight hundred and sixty-five, be surrendered up and canceled at or before the signing of this contract; provided, always, that the rights and privileges by these presents conceded to said

parties of the second part do not embrace, to any extent, or have any reference to, the water works of said city used for the distribution of water for the purposes of irrigation, or affect in any manner any rights of irrigation, either existing at present, or which may exist hereafter, except as to the ten inches of water, as hereinbefore provided. And it is expressly stipulated and covenanted that said parties of the second part shall not dispose of any water for the purpose of irrigation, but shall only take from said river the water necessary for domestic purposes, as above specified.

"In testimony whereof, the said parties have hereunto set their hands and seals, the day and year first above written.

"JOHN KING, *President.*

188 "Approved this 22d day of July, A. D. 1868.

G. AGUILAR, *Mayor.*
JOHN S. GRIFFIN. [SEAL.]
P. BEAUDRY. [SEAL.]
S. LAZARD. [SEAL.]

"Erasure in the fifth and sixth lines of the fourth page; the word 'jails' interlined in the sixth line of the sixth page; the words 'of the improvements made after the approval of this contract,' in the fourteenth line of sixth page; part of twenty-fourth, the twenty-fifth, and part of twenty-sixth lines, sixth page, erased and the words 'to be less than those charged by the said parties of the second part for water' inserted in lieu thereof, all before execution and delivery; the word 'cubic' erased on fourth page.

"In presence of—

CHAS. H. LARRABEE.
JOEL H. TURNER.

"STATE OF CALIFORNIA, } ss:
County of Los Angeles, }

"On this twenty-second day of July, A. D. one thousand eight hundred and sixty-eight, personally appeared before me, Joel H. Turner, a notary public in and for said Los Angeles county, California, C. Augilar, mayor city Los Angeles, California; John S. Griffin, P. Beaudry, and S. Lazard, whose names are subscribed to the annexed instrument as the parties thereto, personally known to me to be the same persons described in and who executed the said annexed instrument as the parties thereto, who each for himself acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

"In witness whereof I have hereunto set my hand and
189 affixed my official seal the day and year in this certificate first above written.

"[SEAL.] JOEL H. TURNER,
Notary Public.

"STATE OF CALIFORNIA, }
County of Los Angeles, } ss:

"C. Aguilar, mayor of the city of Los Angeles, and John King, president of the common council of said city of Los Angeles, being duly sworn, depose and say that as mayor and president of said council they respectively examined the annexed contract and ordinance, and that the words 'and to use unoccupied city lands for the constructing of all necessary reservoirs,' on the fourth page and in the fifth and sixth lines of said page, and the word 'cubic,' in the fourteenth line of said page, and the words 'as the products from the sales of water shall pay less than twelve per cent. per annum on the capital invested,' in the twenty-fourth, twenty-fifth, and twenty-sixth lines on page six, and the word 'cubic,' in the twelfth line on seventh page of said contract and ordinance, were erased before the passage and approval of said contract and ordinance, and that the word 'jails,' in sixth line on sixth page, and the words 'of the improvements made after the approval of this contract,' in fourteenth line on sixth page of said contract, and the words 'to be less than those now charged by the said parties of the second part for water, in the twenty-fourth, -fifth, and twenty-sixth lines of page six*th* of said contract and ordinance, were interlined before the passage and approval of said ordinance and contract.

G. AGUILAR, *Mayor.*
JOHN KING,
President of Common Council.

190 "Sworn to and subscribed before me this 22d day of July, 1868.

"[SEAL.] JOEL H. TURNER,
"*Notary Public.*"

II.

That the contract of lease executed by the mayor and common council of the city of Los Angeles to Jean L. Sansevaine of the water works referred to in the said instrument above set forth was surrendered up and cancelled at or before the execution of the said instrument of July 20, 1868, and in the first paragraph hereof set forth.

III.

That the said J. S. Griffin, P. Beaudry, and Solomon Lazard duly assigned the said instrument and all of their rights thereunder to the plaintiff The Los Angeles City Water Company; which said assignment was recorded June 15, 1869, in Book 13 of Deeds, page 255, records of the county of Los Angeles, and is in words and figures following, to wit:

"This indenture, made the twelfth day of June, in the year of our Lord, one thousand eight hundred and sixty-nine (1869) between John S. Griffin, Solomon Lazard and Prudent Beaudry, all of the city and county of Los Angeles, parties of the first part, and the

'Los Angeles City Water Company' a corporation, formed and existing in the county aforesaid, under the laws of the State of California, located and doing business in said city, party of the second part,

"Witnesseth, that the said parties of the first part, for and in consideration of the sum of three dollars, and divers other good, valuable and sufficient considerations, to them in hand paid
191 by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained and sold, and by these presents do grant, bargain and sell, unto the said party of the second part, and to its assigns forever, all those certain lands, tenements, appurtenances, rights, easements and franchises, situate in the city and county of Los Angeles, State of California, contained and included in and conveyed by three certain instruments, recorded in the county recorder's office of said county to wit:

"First. A deed of conveyance from Rafael Carbajal, to the parties of the first part and one Charles Lepaon, dated February 19th, 1868, recorded in Book 9 of 'Deeds,' page 300.

"Second. A deed of conveyance, to the parties of the first part from Thadeus Amat, bishop of Monterey and Los Angeles, dated June 9th, 1868, recorded in Book 10 of 'Deeds' page 95.

"And third. A certain ordinance of said city, approved July 22d, 1868, and contract annexed thereto, between said city and the parties of the first part, dated July 20, 1868, recorded in Book No. 1, of Miscellaneous Records, page 428.

"Reference being hereby made to said instruments and the description and specifications of the lands, appurtenances and rights thereby conveyed, are hereby made the description of the estate and franchises hereby assigned and transferred.

"Together with all and singular the tenements hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof. And also, all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said parties of the first part, of, in
192 or to the above-described premises, and every part and parcel thereof, with the appurtenances. To have and to hold, all and singular, the above mentioned and described premises, together with the appurtenances, unto the said party of the second part & its assigns forever. (The words 'heirs and' in 15th and 38th lines being erased.)

"In witness whereof, the said parties of the first part have hereunto set their hands and seals, the day and year first above written.

JOHN S. GRIFFIN. [SEAL.]
S. LAZARD. [SEAL.]
P. BEAUDRY. [SEAL.]

"Signed, sealed, and delivered in presence of—
—— ——."

(Duly acknowledged.)

IV.

That the Los Angeles City Water Company took possession of the said water works mentioned in said instrument and pursuant thereto began the laying of pipes in said city to furnish the inhabitants thereof with water, as in the said instrument provided, and did lay down the twelve miles of iron pipe in the city of Los Angeles for the said purpose, and have ever since been extending the pipe system, until there are now about 320 miles of pipe laid in the city of Los Angeles and belonging to the Los Angeles City Water Company and used for the distribution of water for supplying the inhabitants of the city with water for domestic use under said instrument.

V.

That said Los Angeles City Water Company began laying the twelve miles of iron pipe and the erection of the fire-hydrants at one corner of each cross-street of said city immediately after
193 its incorporation, and the same was continued by the said Los Angeles City Water Company, and the twelve miles of pipe were laid and hydrants, to be used as a protection against fire, constructed in pursuance of the said instrument, and ever since the incorporation of the Los Angeles City Water Company it has been extending the pipe system and erecting fire-hydrants in pursuance of the said instrument and under the order of the said city, and at the commencement of this action there were over five hundred hydrants used as a protection against fire in the said city of Los Angeles erected by said Los Angeles City Water Company, and during all of said time the said Los Angeles City Water Company has furnished the city of Los Angeles with water for the extinguishment of fires free of charge.

VI.

That an ornamental fountain upon the public plaza of said city was constructed, as provided in said instrument, by the Los Angeles City Water Company, and reservoirs have been constructed and used in connection with the said water system by the said Los Angeles City Water Company, until there are now in said city six reservoirs constructed by said company, one having a capacity of forty million gallons, another fifteen million gallons, another three and a half million gallons, one of six million gallons, one of three hundred and forty thousand gallons, and one of one million gallons; and said company did within sixty days select the place of diversion of said waters in accordance with said instrument, and began the diversion of the water at the place so selected, and did replace all the wooden pipes referred to in said instrument, and has extended said iron pipes as fast as the citizens desiring to be
194 supplied with water for domestic purposes would agree to take sufficient water to pay ten per cent. per annum interest upon the cost of extending such pipes through the streets then unsupplied with water.

VII.

That the said Los Angeles City Water Company has been ever since the execution of said instrument and assignment furnishing water to the city of Los Angeles for the public schools, city hospitals, and jails therein free of charge.

VIII.

That the said Los Angeles City Water Company and its predecessors paid to the said city of Los Angeles the rent provided in the said instrument, to wit, fifteen hundred dollars per annum, until the 2d day of December, 1870, when the city of Los Angeles passed and published an ordinance accepting a proposition made by the Los Angeles City Water Company, and which said ordinance was published in the said volume, 1878, of published ordinances, at pages 137, 138, and of which the following is a copy:

"The proposition of the Los Angeles City Water Company, this day made, to remove the reservoir now being on the public plaza, and convey to the city of Los Angeles all its right, title, and interest to said plaza, and lay off the same into suitable walks and ornamental grounds, and to erect a fountain thereon after such design as may be furnished by the mayor and common council of said city, at an expense not to exceed one thousand dollars, and surrender all scrip now held by said water company against the 'city water works fund,' upon the conditions and for the considerations
195 herein provided, is hereby accepted; provided, all the said works shall be done, performed, and completed within ninety days after the furnishing of the design for said ornamental fountain by the said mayor and common council.

"Upon the compliance with section one of this ordinance by the Los Angeles City Water Company, at the time and in the manner therein specified, the amount of rent agreed to be paid by the said water company to said city, as provided in a certain contract and ordinance passed July 20th, 1868, and approved July 22d, 1868, shall be, and the same is hereby reduced to the sum of four hundred dollars per annum, which said sum shall be paid in the manner and at the time specified in said contract and ordinance, and shall be received in full payment for all rents due and to grow due from said water company to said city for the uses and privileges given and granted by said ordinance; and the performance of all the provisions of section one hereof within the time and manner specified by the said water company is accepted and shall be received as a full consideration and payment of the rent hereby remitted, which is declared to be all rent in excess of the sum of four hundred dollars per annum, for and during the full period of said contract and franchise.

"An ordinance entitled 'An ordinance contracting for the care, maintenance, and improvement of the city water works,' passed July 20th, 1868, and approved July 22d, 1868, is hereby amended so as to comply with and conform to the provisions of this ordinance.

"Approved December 2d, 1870."

196 And the said ordinance was accepted by the said Los Angeles City Water Company and its terms complied with, and since that time it has paid to the city of Los Angeles the sum of four hundred dollars per annum rent pursuant thereto.

IX.

That the extension of the said system and the obtaining of an increased quantity of water was at all times, when said increase was made, necessary to supply the inhabitants of the city of Los Angeles with water for domestic use, and to furnish the city with water for extinguishing fires, and for all purposes mentioned in said instrument; and the said company has, in meeting the wants of the city, among other things, purchased the system that was established by P. Beaudry, and which was known as the Beaudry system of water works, and also certain water rights in the Arroyo Seco, and conducted water from the Arroyo Seco into the city on the east side of the Los Angeles river, and has been furnishing the inhabitants of that portion of the city with water from said system, and also acquired the stock of the corporation known as the East Side Spring Water Company, the same mentioned in paragraph 10 of the complaint.

X.

That the defendants in this action waive all questions as to the proper joinder of S. G. Murphy and the Crystal Springs Land & Water Company with the Los Angeles City Water Company as plaintiffs and the introduction of any evidence under the allegations made as to the character and sources of the waters in the excavations made by the Crystal Springs Land & Water Com-
197 pany and alleged in the said bill of complaint, and it is stipulated that any decree that may be entered in this cause shall neither be conclusive upon the title to either party to the lands, rights of way, waters, and water rights and easements of all descriptions mentioned in the bill of complaint herein, nor shall the decree be admissible in evidence in any other litigation between the plaintiffs and the defendants or any of them upon the question of title to the said properties, and the decree which may be entered herein shall contain a clause making such reservation.

Such decree shall not, nor shall anything contained in this stipulation, be construed as binding or concluding any of the parties hereto in regard to any fact or matter except in regard to the validity of the contract set forth in the bill of complaint and in regard to the relief expressly awarded by such decree, and said decree shall contain a provision to this effect.

This stipulation does not deprive either party of the right of appeal.

XI.

That in the growth of the city the settlement thereof extended to localities of higher elevation than those occupied by the inhabitants of the city at the time of the execution of said agreement, and the

point selected originally for the diversion of the waters of the Los Angeles river for supplying the city and its inhabitants, as in the instrument provided, was so located in said river that it was impracticable to there maintain dams and diversion works that would not occasionally be swept away or rendered useless by floods, and the surface water of the river after severe storms became muddy and unfit for supplying the inhabitants with water for
198 domestic uses, and in the year 1889 the Crystal Springs Land & Water Company made excavations in the places referred to in the bill of complaint and laid pipes therein, as alleged, and that the water that has been used by the Los Angeles City Water Company for supplying the city and its inhabitants with water, as provided in the said instrument, has ever since been obtained from that source, except that from time to time a further supply of water has been taken from the Los Angeles river in order to adequately supply said inhabitants, and which diversions have been at or near the place where the said underground pipes are laid, and that by these means the water can be delivered to higher elevations, and the underground waters, as to quality and amount, are thus protected against the influences of floods.

But it is understood and agreed that nothing in this stipulation contained is to be construed as an admission on the part of the defendants or either or any of them of any title to said waters collected in the said underground pipes in the plaintiffs or either or any of them, but what are the rights of the parties to this suit with respect thereto is one of the questions reserved from the operation of any decree entered herein.

XII.

That the said Los Angeles City Water Company ever since its incorporation has taken more than ten inches of water, measured under a four-inch pressure, from the Los Angeles river, and the amount taken has increased with the increase of population of the city and the demands of the municipality itself for water for extinguishing fires and the other public uses referred to in the
199 said contract, and the amount has increased until now it requires from one thousand to one thousand five hundred inches of water, measured under a four-inch pressure, for such purposes, and during the summer season the amount of water used by the Los Angeles City Water Company for the purposes aforesaid runs from a thousand to fifteen hundred inches, under a four-inch pressure, inclusive of the water obtained by the underground excavations, which latter furnished from 650 to 690 inches, measured under a four-inch pressure.

That to supply the domestic wants of the people of the city of Los Angeles requires one inch of water, measured under a four-inch pressure, to every one hundred inhabitants.

And the population of said city has increased until it now amounts to about 103,000.

XIII.

That ever since the execution of the said instrument bearing date the 20th of July, 1868, the said Los Angeles City Water Company has made the said improvements and extensions and maintained the same at its own expense.

XIV.

That the bond provided for in the said instrument was given and approved as therein required, and the said parties have paid all State and county taxes assessed upon the said water works.

XV.

That on the 7th of April, 1870, Mr. Chapman, on behalf of the Los Angeles City Water Company, stated to the council that at the last session of the council the company was notified to meet the council and fix the water rates, and the company asked the
200 council to appoint two persons as a committee to meet a committee of two from the water company to fix the rates for water, and upon motion it was ordered to appoint a committee of two; whereupon Messrs. Workman and Caswell were duly appointed members of such committee on behalf of said city of Los Angeles; which communication and the order appointing said committee are entered in the records of the common council of the city of Los Angeles, in vol. 7, page 91:

"Mr. Chapman, on behalf of the Los Angeles City Water Work-Company, stated that at the last session of the council the company was notified to meet the council to fix the water rates. The company asks the council to appoint two persons as a committee to meet a committee of two from the water company to fix the rates for water.

"On motion, it was ordered to appoint a committee of 2. Whereupon the president appointed Messrs. Workman and Morris as such committee.

"On motion of Mr. Boyle, Mr. Caswell was substituted on the committee instead of Mr. Morris."

XVI.

That on April 14th, 1870, the said Workman and Caswell, on behalf of the City of Los Angeles, and S. H. Mott and John G. Downey, on behalf of the Los Angeles City Water Company, made a report to the council; which report was accepted by the said common council of the city of Los Angeles, and approved on the 19th day of April, A. D. 1870, by the mayor, and which said report is entered in vol. 7 of the city archives, at page 92, and of which report the following is a copy:

"To the honorable the mayor and common council of the
201 city of Los Angeles and the Los Angeles City Water Company:

"The undersigned, commissioners duly appointed on behalf of your honorable bodies to adjust, fix, and establish the rates and charges of the Los Angeles City Water Company (a corporation duly incorporated under the laws of the State of California for the purpose of supplying the inhabitants of Los Angeles city with pure, fresh water), respectfully report that they have established water rates and charges for domestic purposes, taking as a guide as near as can be the charges and rates for domestic purposes charged in July, 1868; that your committee have also fixed the rates and charges for other reasonable objects and purposes, and report as follows, to wit:

"SECTION 1.	For tenements occupied by a single family of not more than five persons.....	$2.00
	"For each additional person.....	.25
"SECTION 2.	Bathing-tubs in private houses (for each tub)	1.00
	"In public houses, boarding-houses, bathing establishments, barber shops (for each tub).....	1.00
"SECTION 3.	Bakeries according to the monthly use of flour for each twenty-five barrels.....	2.00
"SECTION 4.	Boarding schools in addition to the rate for private families, for each scholar.....	.20
"SECTION 5.	Building purposes by special contract (for each barrel of lime).....	0.20
"SECTION 6.	Fountains, by special contract only and in no case will be permitted on premises where water is not taken for other purposes, and if water be allowed to flow into other premises where it may be used for
202	other purposes, supply will be stopped, and the amount of payment forfeited.	
"SECTION 7.	Horses, private, including water for washing carriages for one horse.....	0.25
	"Omnibus, stage, stable, each horse.....	0.50
	"Truckmen's carts and saddle-horses.....	0.50
	"Provided that in no case shall any stable be charged less than.....	2.00
"SECTION 8.	Horse troughs, for each trough on sidewalk.....	$5.00 to 10.00
"SECTION 9.	Hose on premises not having a front of more than 25 feet, for the right to attach a hose not exceeding three-fourths of an inch orifice, for washing sidewalks and sprinkling the street, in addition to the charges for other uses.....	1.00
	"Premises above twenty-five feet front in proportion.	

"SECTION 10. Hotels, taverns, and boarding-houses, not including water for baths or for uses without the house, for each bed for boarders and lodgers within the same, in addition to the rate for private families 0.25

"For each day boarder 0.20

"SECTION 11. Lodging-houses, in addition to rate of family keeping the house, for accommodation for each person within the same..... ... 0.20

"SECTION 12. Gardens—sprinkling gardens and grounds, not more than 100 square yards area... 1.00

"Above this area, for every one hundred square yards will be charged..... .. 0.12½

"SECTION 13. Porter-houses, groceries, refectories, etc., shall be charged at the discretion of the water register..... ..... $2.00 to 10.

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"SECTION 14. Printing offices at discretion of the water register.

"SECTION 15. Railroad corporations, rate subject to special agreement in accordance to the quantity of water used.

"SECTION 16. Steam-engines, according to the quantity used at the discretion of the water register.

"SECTION 17. Stores, offices, warehouses and tenements not included in any other classification and requiring only an ordinary amount of water, at the discretion of the water register, not less than..... 2.00

"SECTION 18. Water-closet—for each water-closet, public.. 2.00

"Water-closet—for each water-closet, private. 1.00

"SECTION 19. For large quantities of water, when the quantity used does not exceed 15,000 gallons per month there shall be charged for each 1,000 gallons consumed, as ascertained by meter or otherwise..... 1.25

"When the quantity is over 15,000 gallons per month, for each 1,000 gallons..... 1.00

"For water used for manufacturing and mechanical purposes under 10,000 gallons per month..... ..... 1.00

"Above 10,000 gallons per month, per 1,000. 0.75

"SECTION 20. The board of trustees shall have power in all cases to ascertain by meters, or otherwise, the quantity of water used by any consumer, and to establish a rate for that consumer in accordance with the quantity so ascertained, instead of the special rate given above.

"SECTION 21. For water required for purposes which are not specified in the above tariff, the rate shall be fixed by the water register.

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"SECTION 22. The company will insert the tap and introduce the service to the curbstone by their authorized tapper for..... .... 12.00

"The pipe and fittings remain the property of the company.

"SECTION 23. All water rates payable monthly in advance.

"SECTION 24. The water register will, upon personal examination of the premises of any applicant for water, fix upon its rate, his decision being subject to modification by the board of trustees.

"SECTION 25. Payments will not be received for a less period than one month. Applicants for water at any time after the first day of any month shall pay their rate to the end of the following month.

"That all of said rates are payable monthly in advance in U. S. gold or silver coin.

"Which report we have made and signed in duplicate, and deposited one copy with the secretary of the mayor and common council of Los Angeles city and one copy with the secretary of the Los Angeles City Water Company.

"All of which is respectfully submitted this Los Angeles city this 13th day of April, A. D. 1870.

"E. H. WORKMAN,
"S. B. CASWELL,
"*Committee on Behalf of the City of Los Angeles.*
"S. H. MOTT,
"JOHN G. DOWNEY,
"*Committee on Behalf of the Los Angeles City Water Company.*

205 "The above report having been accepted by the common council is hereby approved by me this 19th day of April, A. D. 1870.

"JOEL H. TURNER, *Mayor.*

"Filed this 13th day of April, 1870.

"M. KREMER,
"*Clerk of Common Council.*

"Council Records, vol. 7, p. 92, session of April 14th, 1870."

XVII.

That on June 8, 1871, the council of the city of Los Angeles appointed another committee, consisting of Messrs. Dockweiler and Osborn, who, in conjunction with a committee of two appointed by the Los Angeles City Water Company, were appointed to fix water rates, and they made a report; which report is as follows:

"To the honorable the mayor and common council of the city of Los Angeles and the Los Angeles City Water Company, a corpora-

tion duly incorporated under the laws of the State of California, for the purpose of supplying the inhabitants of Los Angeles city with pure, fresh water, — respectfully report—

"That we have established and confirmed the rates for domestic and other purposes, as established by the water commissioners of date April 13, 1870.

"All of which is respectfully submitted this 5th day of July, A. D. 1871.

JOHN OSBORN,
HENRY DOCKWEILER,
Committee in Behalf of the City of Los Angeles.
S. H. MOTT,
S. LAZARD,
205½ *Committee in Behalf of the Los Angeles City Water Company.*"

XVIII.

That at the session of the council held August 20, 1874, the following ordinance was passed and became an ordinance of the said city September 20, 1874, and of which said ordinance the following is a copy:

"An ordinance to establish regulation of water rates furnished the inhabitants of this city by the Los Angeles City Water Company.

"The mayor and common council of the city of Los Angeles do ordain as follows:

"SECTION 1. By virtue of the authority vested in and retained by the mayor and common council of the city of Los Angeles by law and by the provisions of the contract and agreement made and entered into between said municipal corporation, as party of the first part, and John S. Griffin, Prudent Beaudry and Solomon Lazard, and their assigns, of the second part.

"Said contract dated 20th of July, 1868, and approved July 22d, 1868. It satisfactorily appearing that the above-mentioned parties of the second part have duly assigned their rights and privileges under said contract to the Los Angeles City Water Company, the following schedule is adopted and established as the water rates to be charged by said water company.

"SEC. 2. The water rates and charges above referred to and hereby established are as follows, to wit:

Schedule of Water Rates.

For tenements occupied by a single family of not more than five persons	$2.00
For each additional person	.25
Bathing-tubs in private houses, for each tub	1.00
In public houses, boarding-houses, bathing establishments, barber shops, on each tub	3.00
206 Bakeries, according to the monthly use of flour, for each twenty-five barrels	2.00

Boarding schools, in addition to the rate of private families, for each scholar..... .20

Building purposes, by special contract for each barrel of lime..... .20

Fountains, by special contract only, and in no case will be permitted on premises where water is not taken for other purposes, and if water be allowed to flow into other premises where it may be used for other purposes, supply will be stopped and the amount of payment forfeited.

Private horses, including water for washing carriages, for one horse..... .25

Omnibuses, stage, stable, each horse..... .50

Truckmen's cart and saddle horses..... .50

Provided that in no case shall any stable be charged less than..... 2.00

For each horse trough on sidewalk ..... 5.00 to 10.00

Hose on premises not having a front of more than twenty-five feet, and for the right to attach a hose not exceeding three-fourths of an inch orifice for washing sidewalk and sprinkling the street, in addition to the charges for other uses..... 1.00

Premises above twenty feet front in proportion.

Hotels, taverns and boarding-houses, not including water for baths or for uses without the house, for each bed for boarders or lodgers, within the same, in addition to the rate for private families..... .25

For each day boarder..... .20

207 Lodging-houses, in addition to rate of family keeping the house for accommodation, for each person within the same..... .20

Sprinkling gardens and grounds, not more than 100 square yards area..... 1.00

Above this area, for every 100 square yards shall be charged 12½ cents.

Porter-houses, groceries, refectories, &c., shall be charged at the discretion of the water register ..... 2.00 to 10.00

Printing offices, at the discretion of the water register.

Railroad corporations, rate subject to special agreement, in accordance to the quantity of water used; steam-engines according to the quantity used, at the discretion of the water register.

Stores, offices, warehouses and tenements not included in any other classification, and requiring only an ordinary amount of water, at the discretion of the water register, not less than..... 2.00

For each public water-closet..... 2.00

For each private " 1.00

For large quantities of water, when the quantity used does not exceed 15,000 gallons per month, there shall be charged for each 1,000 gallons consumed, as ascertained by meter or otherwise..... 1.25

When the quantity is over 15,000 gallons per month, for each 1,000 gallons..... 1.00

For water used for manufacturing or mechanical purposes, under 10,000 gallons per month 1.00

Above 10,000 gallons per month, per 1,000 gallons. .75

208 The board of trustees shall have power in all cases to ascertain, by meters or otherwise, the quantity of water used by any consumer, in accordance with the quantity so ascertained, instead of the special rate given above.

For water required for purposes which are not specified in the above tariff, the rate shall be fixed by the water register.

The company will insert the tap and introduce the service pipe to the curbstone, by their authorized tapper, for... 12.00

"The pipes and fittings remaining the property of the company.

"All water rates payable monthly in advance.

"The water register will, upon personal examination of the premises of any applicant for water, fix upon its rate, his decision being subject to modification by the board of trustees.

"Payments will not be received for a less period than one month.

"Applicants for water at any time after the first day of any month shall pay their rate to the end of the following month.

"That all of said rates are payable monthly in advance, in U. S. gold coin, or silver coin.

"This ordinance shall take effect and be in force from and after its passage, approval and publication, and all ordinances or parts of the same in conflict with this ordinance, shall be, and the same are hereby repealed.

"Passed, session Aug. 20th, 1874.

"Presented to Mayor Toberman for approval August 21st, 1874, and not being returned within ten days thereafter, took effect as if approved, September 2d, 1874.

"M. KREMER, *City Clerk.*

"Published Sept. 20th, 1874."

209 Said ordinance is contained in the volume of ordinances issued by authority of the city of Los Angeles in 1878, and is at pages 238–242 thereof.

XIX.

That on the 8th day of March, 1877, a resolution of said city of Los Angeles was duly passed by the council and published March 13th, 1877, and set out in the volume of ordinances issued by said city in 1878, at pages 450–'1, by which all persons were prohibited from obstructing or causing to be obstructed any public street, and, among other things, prohibiting any person from polluting or causing to be polluted any of the canals or aqueducts of the city, or herding or pasturing any cattle, horses, or hogs or any other animals, or allowing them to be or remain near the reservoir or canal

of the Los Angeles City Water Company in such a manner as to interfere with the purity of said water, or to herd, pasture, feed, or keep any animal on the hillside near or by the canal or reservoir of said company by which any impurity could be carried so as to mingle with or in any manner affect the water of said company.

XX.

That the legislature of the State of California passed an act, approved April 2, 1870, entitled "An act to ratify certain acts and ordinances of the mayor and common council of the city of Los Angeles," which act is published in the statutes of the State of California of 1869–'70, at pages 635–'6, copy of which said act is as follows:

"The People of the State of California, represented in senate and assembly, do enact as follows:

"SECTION 1. The following acts, contracts and ordinances of the mayor and common council of the city of Los Angeles are hereby ratified and confirmed: The contract and lease for the care and maintenance of the Los Angeles City water works, entered into and made between the mayor and common council of the city of Los Angeles, on the one part, and John S. Griffin, Prudent Beaudry and Solomon Lazard, on the other part, dated the twentieth (20th) day of July, eighteen hundred and sixty-eight (1868); and also the ordinance confirmatory of the same, passed July the twenty-second (22d), eighteen hundred and sixty-eight, which contract and ordinance are recorded in the office of the county recorder of Los Angeles county, in Book One of Miscellaneous Records, pages four hundred and twenty-eight (428) to four hundred and thirty-one (431); and also two certain concessions from the said corporation to William G. Dryden, his heirs and assigns, concerning rights of way and water; and the ordinances authorizing the same, passed February twenty-fourth, eighteen hundred and fifty-seven, and December the eighth, eighteen hundred and fifty-seven, respectively, and recorded in the aforesaid recorder's office, in Book Two of Deeds, etc., pages four hundred and fifty-three (453) and four hundred and forty-nine (449), respectively; and a certain conveyance to Hiram McLaughlin, his heirs and assigns, from said corporation, dated August sixth, eighteen hundred and fifty-eight, and recorded in said office in Book Number Four of Deeds, pages two hundred and twenty-five (225) and two hundred and twenty-six (226).

"SEC. 2. This act shall be in force from and after its passage."

XXI.

That the legislature of the State of California passed an act, which was approved April 2, 1870, and published in the Statutes of the State of California, 1869–'70, page 645, entitled "An act concerning water-courses in the city of Los Angeles," by the first section of which certain zanjas were declared public zanjas, and containing,

among other things, the following proviso: "Provided always, that nothing herein contained shall be so construed as to affect or in any manner interfere with any rights, privileges, or easements heretofore granted and conceded to P. Beaudry, John S. Griffin, Solomon Lazard, their associates or assigns, by the mayor and common council of the city of Los Angeles.

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XXII.

That the legislature of the State of California passed an act to amend the charter of the city of Los Angeles, approved April 1, 1876, published in the Statutes of California, 1875–'6, at page 693, and in the first section of the second article it was declared that there was thereby granted to said municipality, to be by it held and enjoyed in absolute ownership, the full, free, and exclusive right to all of the water flowing in the River Los Angeles at any point from its source or sources to the intersection of said river with the southern boundary of said city; also the right to develop, economize, use, and utilize all waters flowing beneath the surface in the bed of said river; and in the said section there was excepted and reserved from the operation of the said grant of the water all vested private rights to the water flowing upon the surface or beneath it in the bed of said river.

XXIII.

That the legislature of the State of California passed an act entitled "An act to amend the charter of the city of Los Angeles," which was approved February 20, 1872, and found in the Statutes of California for 1871–'2, at page 129, and in the second section of which it was enacted that the mayor and common council of the city of Los Angeles should have full and complete control and power over all zanjas, water-courses, water ditches, and canals within the city limits, excepting the rights, privileges, and franchises heretofore granted and then enjoyed by the Los Angeles City Water Company.

XXIV.

That the legislature of the State of California passed an act entitled "An act to amend the charter of the city of Los Angeles," etc., approved March 26th, 1874, found in the Statutes of California for 1873–'4, at page 659, the 28th section of which is as follows:

"SEC. 28. All acts of the legislature relating to the said city of Los Angeles, and all city ordinances heretofore passed, and
212 now in force, and not inconsistent therewith, shall be and remain in full force after this act takes effect, and thereafter until repealed by the proper authority; and all rights vested or liabilities incurred under any former act of the legislature applicable to said city, or any city ordinance, when this takes effect, shall not thereby be lost, impaired or discharged."

XXV.

That the legislature of the State of California passed an act, which was approved March 30, 1878, and found in the Statutes of Califor-

nia for 1877–'8, on page 849, and entitled "An act to ratify certain contracts and ordinances of the council of the city of Los Angeles," the first section of which is as follows:

"SECTION 1. The council of the city of Los Angeles is hereby empowered to contract for the proper sprinkling of the streets of said city, or for the supply of water for such purposes, either with the Los Angeles City Water Company, or any other party, and is empowered to provide for the payment of any compensation agreed, or to be agreed to be paid for such service, in the same manner that any other expenses on the part of said city is or shall be provided for."

XXVI.

That an ordinance was passed by the council and approved by the mayor of the city of Los Angeles on June 6, 1879, and which ordinance is numbered 9, and was published the same date, and found in the compilation so published in 1884, at page 24.

That by said ordinance all persons were prohibited from interfering with the free flow of the Los Angeles river and in any way diverting it without permission of said council, and a provision was contained in said ordinance providing for the punishment of its violation as a misdemeanor.

XXVII.

That on the 12th day of June, 1879, there was approved, and on the 14th of the same month published, another ordinance of
213 the city, published in the same volume, at page 25, of the same character.

XXVIII.

That on the 9th of August, 1887, a resolution was passed by the mayor and council of the city of Los Angeles, and which was published August 11, 1887, and is numbered 572, found in volume of ordinances published in 1889, page 255, by which it was resolved that there existed a necessity for the erection of one hydrant for protection against fire at eleven different points in said city, specified in said ordinance, the second section of which is as follows:

"SEC. 2. That the Los Angeles City Water Company, a corporation, as the successor and assignee of John S. Griffin, Prudent Beaudry and Solomon Lazard, are hereby ordered to erect or cause to be erected one fire-hydrant for protection against fire at one corner of each of the cross-streets hereinafter named, that is to say: at one corner of each of the intersection of corners specified in section 1 of this resolution as provided by agreement approved July 22, 1868."

XXIX.

That on the 13th of August, 1874, a committee, consisting of two members appointed by the council of said city and two members appointed by the Los Angeles City Water Company, presented to the council a report; which report was duly adopted, and of which said report and the action of the council thereon, as entered in

vol. 9 of the Records of the City of Los Angeles, page 33, the following is a copy:

"The committee heretofore appointed for regulating and fixing the rates of water to be charged by the Los Angeles City Water Company, reported that they have established water rates and charges for domestic purposes, taking as a guide, as near as can be, the charged and rates for domestic purposes charged in July,
214 1868. The committee also fixed the rates and charges for other reasonable objects and purposes. They submitted a scale of prices for the different objects. Mr. Gerkins moved that the report be received and adopted as read. Carried.

"Mr. Huber moved that a committee be appointed, who, in conjunction with the city attorney, be instructed to draft an ordinance embodying the prices as fixed in the report of the above committee appointed for that purpose. Carried. Whereupon the president appointed Messrs. Huber, Gerkins, and Mascarel as said committee."

And the rates were established in accordance with the said report and with the same schedule hereinbefore set forth.

XXX.

That on February 17, 1896, the fire commissioners of the city of Los Angeles made a report to the council, and the council acted thereupon, and the following is a copy of the said report and action of the council as entered in the City Records, vol. 45, page 607:

"The fire commissioners reported: First, at a meeting of the board of fire commissioners held this day I was directed to call attention to the fact that the city water company is now putting in water mains on South Hope and South Flower, and request that you order fire-hydrants placed at the intersection of said streets with Ninth, Twelfth, Fourteenth, Fifteenth, Sixteenth, Seventeenth, Eighteenth, and Washington.

"Which report was adopted."

And on February 17, 1896, as appears from vol. 45, page 617, the following proceeding was had:

"Mr. Pessell moves that the Los Angeles City Water Company be directed to lay a four-inch main on Santee street between Ninth street and Twenty-third street, where there is not already a four-inch pipe laid, and place fire-hydrants at every other intersection on said Santee street.

"Which motion was adopted."

And on February 24, 1896, as appears on page 652, the following proceeding was had:

215 "Mr. Kingery moves that the city clerk notify the water company to repair the fire-hydrant at the corner of Pico and Pearl streets.

"Which motion was adopted."

XXXI.

That on February 23, 1897, the following proceeding was had by the city council of Los Angeles city, as appears in vol. 48, page 500, of the Council Records:

"The fire and water committee reported:

"Recommend that petition number 139, from R. Zellner *et al.*, asking that a fire-hydrant be placed on the corner of Oak and Washington streets, be granted, and the Los Angeles City Water Company instructed to erect said hydrant.

"Which report was adopted."

Same page and session:

"The water supply committee reported: You committee on water supply, to whom was referred the matter of fixing water rates for the year commencing July 1st, 1897, and ending June 30th, 1898, beg leave to report as follows:"

(Committee comment upon the difficulty of fixing on rates satisfactory to all concerned, etc., etc.)

"We recommend that the accompanying ordinance be placed upon its passage. Draft of an ordinance of the mayor and council of the city of Los Angeles was read, regulating the rates and compensation allowed to be collected by any person or corporation supplying water for domestic and private purposes to the inhabitants of the city of Los Angeles during the year commencing July 1, 1897, and ending June 30, 1890."

Same session, page 532:

"Mr. Toll moves that the Los Angeles Water Company be instructed to lay four-inch pipes on West Adams, Twenty-ninth, and Jefferson streets from Hoover street to Vermont avenue.

"Which motion was adopted."

216 Same session, page 532:

"Mr. Silver moves that the City Water Company be instructed to lay a four-inch main on Moore street from Ninth to Lincoln, and to place a fire-hydrant at the corner of Moore and Lincoln streets.

"Which motion was adopted."

XXXII.

That the council of the city of Los Angeles, since and including the year 1889, has in February of each year passed ordinances fixing the rates to be charged by all corporations and persons within the city of Los Angeles supplying water to the inhabitants thereof, to be in force for one year from and including July 1st; which rates have been less than the rates charged in 1870, as contained in the ordinances hereinbefore set forth, and the Los Angeles City Water Company has collected the rates thus fixed by the city of Los Angeles and no more; but in the year 1896 the council of the city of Los Angeles passed an ordinance fixing the rates to be charged for water for the year commencing July 1, 1896, and ending July 1, 1897, at less than they had ever been fixed before, *ad* and a suit was then brought by the plaintiffs herein in this court against the city of Los Angeles to set aside the said ordinance, and in February of 1897 the city of Los Angeles passed an ordinance which is assailed in this suit and making a still further reduction in the rates.

That the said action of the Los Angeles City Water Company in

collecting the rates fixed by the said several ordinances constitute the only acquiescence of said company (if it be an acquiescence) in the action of the said council.

XXXIII.

That if the rates so established by the council in 1870, and confirmed by the ordinances of the city hereinbefore set forth, were collected for the year beginning July 1, 1897, and ending June 30, 1898, the revenues received by the Los Angeles City Water
217 Company from said rates would be more than fifty thousand dollars in excess of the amount which would be received under the rates named in the ordinances of February, 1897, as set forth in the bill herein.

XXXIV.

That the Crystal Springs Land & Water Company was organized in the year 1886 by the stockholders of the Los Angeles City Water Company, and the said stockholders subscribed and took the stock of the said Crystal Springs Land & Water Company in the same proportion that they held stock in the Los Angeles City Water Company, and though there have been some variations from time to time, the said stock of both companies is held now by the stockholders in the same proportions in each company.

XXXV.

That whatever interest the Crystal Springs Land & Water Company has in a large portion of the property claimed by it was conveyed to it by the Los Angeles City Water Company, but since the organization of said Crystal Springs Land & Water Company and since the conveyances aforesaid the Crystal Springs Land & Water Company has acquired other tracts of land in the Rancho San Rafael and other lands and rights of way in the Los Feliz Rancho which never did belong to the Los Angeles City Water Company.

XXXVI.

The city attorney of the city of Los Angeles did, at a regular meeting of the council of the city of Los Angeles held on the 17th day of August, 1896, make the following report:

218 *Council Proceedings.*

Regular meeting of the council of the city of Los Angeles, held August 17, 1896.

The city attorney reported:

I have for some weeks had under consideration the question of the passage of a resolution by the city council affirming the right of the city to all the waters of the Los Angeles river and asserting its title to the same. Such a resolution will impart notice to the

world of the city's claim, and no person or corporation will hereafter be able to say that they have proceeded with the diversion or use of any of these waters with any such consent of the city as might be implied from its silence on the subject.

The constant attempts that are being made from time to time to acquire rights in these waters make it necessary that we should leave no steps untaken to protect this the city's most valuable possession.

The constantly increasing value of this water makes its protection more necessary and for the same reason more difficult. Had such a declaration been made and maintained during the earlier years of the city's existence much expensive litigation might have been avoided.

We are entering upon a critical period in the history of the city's water supply and the passage of this resolution can do no harm and may be of inestimable benefit.

Permit me to say, in closing, that I have presented this resolution with the express approbation of Messrs. Lee & Scott, the city's special council.

219 I advise its adoption and publication.

Referred to the water supply committee.

The water supply committee reported:

Your committee on water supply have during the past week conferred with the city attorney with reference to the passage of a resolution confirming the rights of the city in the waters of the Los Angeles river, and would recommend the passage of a resolution to that effect, which will be presented by the city attorney.

Which report was adopted.

(See Book 47, page 123–'4, Council Records.)

220 At a regular meeting of the council of the city of Los Angeles, October 19, 1896.

The city attorney reported, and the council acted, and the following is a copy of the report and the action of the council:

I present herewith and ask you to adopt a resolution with reference to the taking of water by the City Water Company and authorizing me to make certain demands upon them and to bring an action as in the said resolution described. This resolution was prepared by Messrs. Lee & Scott and myself after mature deliberation and with the special view of litigation now pending and to be instituted.

We regard your immediate passage of this resolution as important.

Which resolution was as follows:

Resolved, That from this date and including the 22nd day of July, 1898, or until the further order of this council, the Los Angeles City Water Company, and all other persons and corporations taking the water hereinafter mentioned for the purpose of distributing or selling the same in the city of Los Angeles, be required to pay to the city of Los Angeles an amount of money equal to 40 % of the gross rates received from the consumers of said water as rental for the water now passing through what is known as the gate-house of said company located on the Rancho Los Feliz near and on the west side

of the Los Angeles river, and all other water taken from the Los Angeles river by said company, person, or corporations on said Rancho Los Feliz and brought down into said city for supplying the inhabitants thereof with water for domestic use (including watering of grass plots and gardens and supplying water for manufacturing, building, and trade purposes, but not including water used for sprinkling streets, extinguishing fires, flushing sewers, watering parks, supplying schools and municipal buildings, and for
221 other municipal purposes, and also excepting ten inches of said water, measured under a four-inch pressure), said rental to be paid to said city at the end of every three months during said period.

Resolved further, That said Los Angeles City Water Company and said other persons and corporations taking said water as hereinbefore mentioned be required before the 21st of October, 1896, to attorn to the city of Los Angeles as tenant of said city for all the water hereinbefore mentioned (said water being in part all the water mentioned in the bill of complaint on file in the suit of Crystal Springs Land and Water Company and S. G. Murphy, trustee, against The City of Los Angeles, in the United States circuit court of the 9th circuit for the southern district of California, being case # 583) and to agree to pay said rental to the city of Los Angeles, and that in case of the failure to attorn and agree to pay said rental said company and all other persons and corporations do refrain from diverting, taking, or interferring with any of the water mentioned in this resolution (except said 10 inches) after the 20th of October, 1896.

Resolved further, That the city attorney be, and he is hereby, authorized and directed forthwith to institute suit in the name of the city of Los Angeles against said Los Angeles City Water Company to enjoin the diversion of all or any portion of said water (except said 10 inches), and to quiet title thereto, unless said company shall on or before October 20, 1896, so attorn and agree to pay rent, as aforesaid, and that the city attorney do also, in any event, bring suit in the name of the city of Los Angeles against the Crystal Springs Land and Water Company and S. G. Murphy, trustee, and all other persons and corporations claiming said water or any part thereof adversely to the city of Los Angeles, to quiet title to said water and enjoin said diversion thereof.

222 Resolved further, That the city attorney be, and he is hereby, authorized to bring such other suits, actions, and legal proceedings in regard to the water mentioned in this resolution or any part thereof or any other water belonging to the city of Los Angeles and against such persons and corporations as he may deem necessary or proper to protest or enforce the right of the city of Los Angeles thereto.

Resolved further, That the city attorney be, and he is hereby, directed to notify said Los Angeles City Water Company of this resolution, and to demand compliance therewith in such a manner as he may deem proper, and that he be, and hereby is, authorized and directed to give all notices and to make all demands on behalf of

the city of Los Angeles which he may consider necessary or proper to carry out the intent of this resolution or to advance or protect the interests of the city of Los Angeles in the premises.

Which resolution was adopted by the following vote:

Ayes—Messrs. Ashman, Blanchard, Kingery, Munson, Pessell, Snyder, and Stockwell—7.

Noes—None.

(See Book 47, page 461, Council Records.)

which said resolution has never been modified or repealed; and that thereafter, on said 19th day of October, 1896, the city attorney of said city did, in writing, notify said Los Angeles City Water Company and the other complainant, Crystal Springs Land & Water Company, of said resolution and demanded compliance therewith, and with such notification did deliver a copy of said resolution to each of said companies, and that neither of said companies ever attorned to said city for said water or any part thereof or ever agreed to pay any rental for the same after the passage of said resolution, and that ever since said notification up to the present time said Los Angeles City Water Company has continuously taken from said Los Angeles river, at a point above the northern boundary
223 of said city, for the purpose of distributing and selling the same in said city, a quantity of water varying from 400 inches to 1,000 inches, measured under a four-inch pressure.

XXXVII.

That on December 13, 1886, said Los Angeles City Water Company, without consideration, made a deed of conveyance to said Crystal Springs Land & Water Company, whereby said Los Angeles City Water Company did convey to said Crystal Springs Land & Water Company all the grantor's interest in the portion of the Crystal Springs tract mentioned in the bill of complaint and therein alleged to have been conveyed to said Crystal Springs Land & Water Company, and also the conduit by which said Los Angeles City Water Company had theretofore been conveying water from its source of water supply down to the reservoir located on the west side of said river just above the Buena Vista Street bridge, and also all other water rights, rights of way, and other property claimed by said Los Angeles City Water Company outside of said city, and that thereafter, on December 30, 1886, said Crystal Springs Land & Water Company made a lease to said Los Angeles City Water Company purporting to lease to the latter all of the property so purported to (+ no)* have been conveyed by said last-mentioned deed, upon the terms that said Los Angeles City Water Company should pay to said Crystal Springs Land & Water Company monthly forty (+ no)* per cent. of the gross earnings and receipts realized by said Los Angeles City Water Company from the sale of water during the term of said lease, to wit, eleven years from January 1, 1887.

[* Sign and word enclosed in parentheses in pencil in copy.]

That on November 5, 1886, articles of incorporation of complainant Crystal Springs Land & Water Company were signed and acknowledged, and on November 10, 1886, the same were filed with the county clerk of Los Angeles county, California, and thereafter, on November —, 1886, a certificate of incorporation was issued to said company by the secretary of state.

224 That said corporation was formed with a capital stock of $1,240,000.00, of which $4,500.00 was subscribed for the term of fifty years, and for the purposes of buying, acquiring, receiving, selling, conveying, leasing, renting, and generally dealing in and with lands, waters, water rights, and water works in said county.

That ever since its incorporation the directors of said Crystal Springs Land & Water Company were also directors of said Los Angeles City Water Company.

That no assessments have ever been levied on the stockholders of said Crystal Springs Land & Water Company as such, but all of the expenses of said corporation and the price of the property purchased by it have been paid out of moneys collected by said Los Angeles City Water Company for rates for supplying water to the inhabitants of the city of Los Angeles or from moneys raised by joint loans contracted by both companies.

XXXVIII.

The city of Los Angeles has always had flowing in the Los Angeles river at the point from which said Los Angeles City Water Company has always diverted water from said river a quantity of water sufficient to have supplied said Los Angeles City Water Company with all the water required to supply said city and its inhabitants with water for domestic purposes and municipal uses, and has never objected up to October 20, 1896, to said Los Angeles City Water Company taking as much water from said river as it might require for said uses, and during all of said period said city has never objected to said company's taking from the surface stream of said river at said point as much water as said company needed for said uses.

XXXIX.

Wherever in this stipulation and in other places it is said that the council of the city duly passed an ordinance entitled so and so, it is hereby agreed that by the use of the word "duly" nothing is conceded by either party as to the power of the council to

225 pass the resolutions or ordinances referred to, nor of the effect thereof, but only that so far as the forms and proceedings required by statute or otherwise to be observed in the passage of resolutions or ordinances are concerned they were complied with in the instances referred to, and that the proceedings themselves culminating in the resolution or ordinance were regularly had and taken; and where in this stipulation nothing is said about the publication of an ordinance or resolution where publication is required, it is to be understood that such publication was made.

XL.

That the articles of incorporation of said Los Angeles City Water Company were dated August 15, 1868, acknowledged August 17, 1868, and filed with the county clerk on the same date, and the certificate of incorporation was issued to the said company by the secretary of state August 26, 1868.

The incorporators of said company were Griffen, Beaudry, and Lazard, parties to the contract set forth in the bill of complaint, and others.

Said Griffin, Beaudry, and Lazard applied for said contract on behalf of themselves and of other persons who united with them in the formation of said company, and procured said contract for the benefit of themselves and all of said other persons with the intention of forming a corporation to carry out said contract.

Said Los Angeles City Water Company was incorporated for the term of thirty years, with a capital stock of $220,000.00, for the purpose of supplying the inhabitants of said city of Los Angeles with water for domestic purposes and conducting the same into and distributing the same through the streets and alleys of said city by means of pipes, tubes, hydrants, flumes, ditches, wheels, reservoirs, pumps, or other machinery, said water to be taken from the Los Angeles river or the zanjas and branches thereof or springs forming the same, or from such other source of supply as said corporation might find convenient and economical; and to make certain improvements, and to sell and distribute water to the inhab-
226 itants of said city for domestic purposes under the terms of the contract set forth in the bill of complaint.

Said Griffin, Beaudry, and Lazard did nothing personally with regard to carrying out said contract or constructing or maintaining any water works, but said Los Angeles City Water Company, as soon as it was formed, proceeded with the carrying out of said contract and did everything that has ever been done under said contract.

XLI.

At the time of the signing and delivery of the contract set forth in the bill of complaint and during the whole of the year 1868 the territorial limits of the city of Los Angeles under its existing charter were as follows: Four square leagues in a square form, the center whereof is the center of the old pueblo plaza.

Since then, in about 1872, the limits were extended 420 yards south of the former south boundary, and within the past three years and prior to July, 1897, the limits were further extended, so as to take in about between ten and fifteen square miles of additional adjoining territory; but immediately after the extension of the said limits the Los Angeles City Water Company began to extend its pipes over the said addition to the city as the same was settled up and improved, and ever since has been and is now furnishing water to the people in the said district added to the original territory of the city, and did, upon the demands of the city council, erect fire-hydrants within the said additional territory and furnished water

free of charge, and has in all respects continued to lay pipes, erect fire-hydrants, and furnish the inhabitants with water for domestic uses in like manner as it has conducted the same business within the original limits of the city as established by the act incorporating it; and so with the more recent extensions of the city limits, to wit, those made within the last three years, the company has also extended its pipes in portions of those limits and furnished water in the same way.

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XLII.

On June 28, 1880, the council of said city duly passed an ordinance entitled "An ordinance to establish regulations of water rates furnished to inhabitants of this city by the Los Angeles City Water Company," which was approved June 29, 1880, by the mayor and published June 30, 1880, whereby it was provided that "the water rates and charges of the Los Angeles City Water Company from July 1, 1880, to July 1, 1881, are hereby established as follows, to wit: 1. For tenements occupied by single family of not more than five persons, $2.00; 2, for each additional person, 15 cents." (Here follows 28 additional rates, each one of which is less than that prescribed in the rates adopted in 1870.)

On February 24, 1881, an ordinance entitled "An ordinance to establish regulations of water rates furnished to the inhabitants of the city of Los Angeles for the year commencing on July 1, 1881," was duly passed by the council of said city and approved March 7, 1881, by the mayor and published March 8, 1881, providing that "the rates to be charged for water by any corporation, company or individual, now furnishing water to the inhabitants of the city of Los Angeles, or to furnish the same hereafter, shall be and are as follows, for the year commencing July 1, 1881, and the following schedule of rates is hereby established and declared to be the water rates for said city during said period: For tenements occupied by single family of not more than five persons, $2.00; for each additional person, 25 cents." (Here follows 24 additional rates, each one of which is less than that prescribed in the rates adopted in 1870.)

On January 4, 1882, an ordinance was duly passed by the council of said city and approved January 6, 1882, and published January 7, 1882, requiring all persons, companies, or corporations furnishing water to the inhabitants of said city to furnish during the month of January of each and every year the said council with a detailed statement of the affairs of said corporation, person, or company,
228 as required by sections 2 and 3 of an act of the legislature of the State of California approved March 7, 1881, and entitled "An act to enable the board of supervisors, town council, board of aldermen or other legislative body of any city and county, city or town to obtain data and information from any corporation, company or person supplying water to such city and county, city or town, requiring such boards, town council or other legislative body to perform the duties prescribed by section one of article fourteen of the constitution, and prescribing penalties for the non-performance of such duties."

On February 21, 1882, an ordinance entitled "An ordinance to establish regulations of water rates furnished to the inhabitants of the city of Los Angeles for the year commencing on July 1, 1882," was duly passed by the council of said city and approved by the mayor February 23, 1882, and published February 24, 1882, providing that "the monthly rates of compensation to be collected by any person, company, or corporation engaged in the business of supplying water to the inhabitants of the city of Los Angeles for domestic purposes for the year commencing July 1, 1882, and ending June 30, 1883, are hereby fixed as follows: For tenements occupied by a single family of not more than five persons, for one-story buildings, $1.50; for two-story buildings, $2.00; for three-story buildings, $2.50; for each additional person in any one family over five, 15 cents." (Here follow 12 other rates, each one of which is less than that prescribed in the water rates adopted in 1870.)

On February 23, 1883, an ordinance entitled "An ordinance establishing water rates and fixing the compensation for water to be furnished by any person, company, or corporation for family uses, for private purposes, for municipal uses, and for all public purposes in the city of Los Angeles for the year commencing July 1st, 1883," was duly passed by the council of said city and approved by the mayor February 24, 1883, and published February 27, 1883, providing that "the monthly rates of compensation to be collected by any person, company, or corporation engaged in the business
229 of supplying water to the inhabitants of the city of Los Angeles for domestic purposes, for private purposes, for municipal purposes and for all public purposes of said city for the year commencing July 1st, 1883, and ending June 30th, 1884, are hereby fixed as follows: For tenements, including for bath-tub, occupied by a single family, for one-story buildings, $1.50; for two-story buildings, $2.00; for three-story buildings, $2.50." (Here follow 14 additional rates, each of which is less than that prescribed in the rates adopted in 1870.)

On February 11, 1884, an ordinance entitled "An ordinance establishing water rates and fixing the compensation for water to be furnished by any person, company, or corporation for family uses, for private purposes, for municipal uses, and for all public purposes in the city of Los Angeles for the year commencing July 1, 1884," was duly passed by the council of said city and approved by the mayor February 15, 1884, and published February 22 and 23, 1884, providing that "the monthly rates of compensation to be collected by any person, company, or corporation engaged in the business of supplying water to the inhabitants of the city of Los Angeles for domestic purposes, for private purposes, for municipal purposes, and for all public purposes of said city for the year commencing July 1, 1884, and ending June 30, 1885, are hereby fixed as follows: For tenements (including for bath-tub) occupied by a single family, for one-story buildings, $1.50; for two-story buildings, $2.00; for three-story buildings, $2.50." (Here follow 12 other rates, each of which is less than that prescribed in the rates adopted in 1870.)

On February 17, 1885, an ordinance entitled "An ordinance es-

tablishing water rates and fixing the compensation for water to be furnished by any person, company, or corporation for family uses, for private purposes, for municipal uses, and for all public purposes in the city of Los Angeles, for the year commencing July 1, 1885," was duly passed by the council of said city and approved by the mayor February 21, 1885, and published February 24, 1885,
230 providing that "the monthly rates of compensation to be collected by any person, company, or corporation engaged in the business of supplying water to the inhabitants of the city of Los Angeles for domestic purposes, for private purposes, for municipal purposes, and for all public purposes of said city for the year commencing July 1, 1885, and ending June 30, 1886, are hereby fixed as follows: For tenements, including bath-tub, occupied by single family, for one-story buildings, one dollar and fifty cents; for two-story buildings, two dollars; for three-story buildings, two dollars and fifty cents." (Here follow 12 other rates, each of which is less than that prescribed in the rates adopted in 1870.)

On February 26, 1886, an ordinance entitled "An ordinance establishing water rates and fixing the compensation for water to be furnished by any person, company, or corporation for family uses, for private purposes, and for other uses in the city of Los Angeles for the year commencing July 1, 1886," was duly passed by the council of said city and was presented to the mayor for his approval March 1, 1886, and returned by him to the clerk of the council without his approval March 22, 1886, and thereupon became as effective and valid as if the mayor had approved it, and was published March 22, 1886, providing that "the monthly rates of compensation to be collected by any person, company, or corporation engaged in the business of supplying water to the inhabitants of the city of Los Angeles for domestic and other purposes for the year commencing July 1, 1886, and ending June 30, A. D. 1887, are hereby fixed as follows: For tenements occupied by a single family, including bath-tub and water-closet, one dollar and fifty cents ($1.50)." (Here follow 11 other rates, each of which is less than that prescribed in the rates adopted in 1870.)

On February 15, 1887, an ordinance entitled "An ordinance establishing water rates and fixing the compensation for water to be furnished by any person, company, or corporation for family uses, for private purposes, and for other uses in the city of Los Angeles for the year commencing July 1, A. D. 1887," was duly
231 passed by the council of said city and approved by the mayor February 21, 1887, and published February 22, 1887, providing that "the monthly rate of compensation to be collected by any person, company, or corporation engaged in the business of supplying water to the inhabitants of the city of Los Angeles for domestic and other purposes for the year commencing July 1, A. D. 1887, and ending June 30, 1888, are hereby fixed as follows: For tenements occupied by a single family, including bath-tubs and water-closets, one dollar and fifty cents ($1.50)." (Here follow 13 other rates, each of which is less than that prescribed in the rates adopted in 1870.)

On February 27, 1888, an ordinance entitled "An ordinance

establishing water rates and fixing the compensation for water to be used by any person, company, or corporation for family uses, for private purposes, and for other uses in the city of Los Angeles for the year commencing July 1, A. D. 1888," was duly passed by the council of said city and approved by the mayor March 3, 1888, and published March 6, 1888, providing that "the monthly rate of compensation to be collected by any person, company, or corporation engaged in the business of supplying water to the inhabitants of the city of Los Angeles for domestic and other purposes for the year commencing July 1, A. D. 1888, and ending June 30, 1889, are hereby fixed as follows: For tenements occupied by a single family, including bath-tubs and water-closets, one dollar and fifty cents ($1.50)." (Here follow 13 other rates, each of which is less than that prescribed in the rates adopted in 1870.)

On March 18, 1889, an ordinance entitled "An ordinance establishing water rates and fixing the compensation for water to be furnished by any person, company, or corporation for domestic purposes, for private purposes, and for other uses in the city of Los Angeles for the year commencing July 1, 1889, and ending the 30th day of June, 1890," was duly passed by the council of said city and approved by the mayor March 20, 1889, and published March 25,
1889, providing that the monthly rate of compensation to be
232 collected by any person, company, or corporation engaged in
the business of supplying water to the inhabitants of the city of Los Angeles for domestic and other purposes for the year commencing July 1, A. D. 1889, and ending June 30, 1890, are hereby fixed as follows: For tenements-houses occupied by a single family, including bath-tubs and water-closets, $1.50 per month." (Here follow 19 other rates, each of which is less than that prescribed in the rates adopted in 1870.)

On February 24, 1890, an ordinance entitled "An ordinance regulating the rates and compensation allowed to be collected by any person or corporation supplying water for domestic use and private purposes to the inhabitants of the city of Los Angeles during the year commencing July 1, 1890, and ending June 30, 1891," was duly passed by the council of said city and approved by the mayor March 8, 1890, and published March —, 1890, providing that "the monthly rates to be collected by any person or corporation engaged in the business of supplying water to the inhabitants of the city of Los Angeles for domestic uses and for private purposes for the year commencing July 1, 1890, and ending June 30, 1891, are hereby fixed as follows: For every tenement or dwelling house of not exceeding three living-rooms, occupied by a single family, 75 cents; for every tenement or dwelling house of four living-rooms, occupied by a single family, 90 cents; for every tenement or dwelling house of five living-rooms, occupied by a single family, $1.00; for every tenement or dwelling house of six living-rooms, occupied by a single family, $1.15; for every tenement or dwelling house of seven living-rooms, occupied by a single family, $1.30; for every tenement or dwelling house of eight living-rooms, occupied by a single family, $1.45; for every tenement or dwelling house of nine living-rooms,

occupied by a single family, $1.60; for every tenement or dwelling house of ten living-rooms, occupied by a single family, $1.75; for every tenement or dwelling house having over ten living-
233 rooms and occupied by a single family, for every additional room, 10 cents." (Here follow 22 other rates, each of which is less than that prescribed in the rates adopted in 1870.)

On February 24, 1891, an ordinance entitled "An ordinance regulating the rates and compensation allowed to be collected by any person or corporation supplying water for domestic use and private purposes to the inhabitants of the city of Los Angeles during the year commencing July 1, 1891, and ending June 30, 1892," was duly passed by the council of said city and approved by the mayor March 9, 1891, and published March 10, 1891, providing that "the monthly rates to be collected by any person or corporation engaged in the business of supplying water to the inhabitants of the city of Los Angeles for domestic and private purposes for the year commencing July 1, 1891, and ending June 30, 1892, are hereby fixed as follows: For every tenement or dwelling house of not exceeding three living-rooms, occupied by a single family, 75 cents; for every tenement or dwelling house of four living-rooms, occupied by a single family, 90 cents; for every tenement or dwelling house of five living-rooms, occupied by a single family, $1.00; for every tenement or dwelling house of six living-rooms, occupied by a single family, $1.15; for every tenement or dwelling house of seven living-rooms, occupied by a single family, $1.30; for every tenement or dwelling house of eight living-rooms, occupied by a single family, $1.45; for every tenement or dwelling house of nine living-rooms, occupied by a single family, $1.60; for every tenement or dwelling house of ten living-rooms, occupied by a single family, $1.75; for every tenement or dwelling house of over ten living-rooms, and occupied by a single family, for every additional room 10 cents." (Here follow 29 other rates, each of which is less than that prescribed in the rates adopted in 1870.)

On February 24, 1892, an ordinance entitled "An ordinance regulating the rates and compensation allowed to be collected by any person or corporation supplying water for domestic use and
234 private purposes to the inhabitants of the city of Los Angeles during the year commencing July 1, 1892, and ending June 30, 1893," was duly passed by the council of said city and approved by the mayor on February 27, 1892, and published February 29, 1892, providing that "the monthly rates to be collected by any person or corporation engaged in the business of supplying water to the inhabitants of the city of Los Angeles for domestic and private purposes for the year commencing July 1, 1892, and ending June 30, 1893, are hereby fixed as follows: For every tenement or dwelling house of not exceeding three living-rooms, occupied by a single family, 75 cents; for every tenement or dwelling house of four living-rooms, occupied by a single family, 90 cents; for every tenement or dwelling house of five living-rooms, occupied by a single family, $1.00; for every tenement or dwelling house of six living-rooms, occupied by a single family, $1.15; for every tenement or

dwelling house of seven living-rooms, occupied by a single family, $1.30; for every tenement or dwelling house of eight living-rooms, occupied by a single family, $1.45; for every tenement or dwelling house of nine living-rooms, occupied by a single family, $1.60; for every tenement or dwelling house of ten living-rooms, occupied by a single family, $1.75; for every tenement or dwelling house of over ten living-rooms, and occupied by a single family, for every additional room, 10 cents." (Here follows 29 other rates, each of which is less than that prescribed in the rates adopted in 1870.)

On February 27, 1893, an ordinance entitled "An ordinance regulating the rates and compensation allowed to be collected by any person or corporation supplying water for domestic use and private purposes to the inhabitants of the city of Los Angeles during the year commencing July 1, 1893, and ending June 30, 1894," was duly passed by the council of said city and approved by the mayor on February 28, 1893, and published March 2, 1893, providing that "the monthly rates to be collected by any person or corporation engaged in the business of supplying water to the inhab-
235 itants of the city of Los Angeles for domestic and private purposes for the year commencing July 1, 1893, and ending June 30, 1894, are hereby fixed as follows: For every tenement or dwelling house of not exceeding three living-rooms, occupied by a single family, 75 cents; for every tenement or dwelling house of four living-rooms, occupied by a single family, 90 cents; for every tenement or dwelling house of five living-rooms, occupied by a single family, $1.00; for every tenement or dwelling house of six living-rooms, occupied by a single family, $1.15; for every tenement or dwelling house of seven living-rooms, occupied by a single family, $1.30; for every tenement or dwelling house of eight living-rooms, occupied by a single family, $1.45; for every tenement or dwelling house of nine living-rooms, occupied by a single family, $1.60; for every tenement or dwelling house of ten living-rooms, occupied by a single family, $1.75; for every tenement or dwelling house of over ten living-rooms and occupied by a single family, for every additional room, 10 cents." (Here follow 29 other rates, each of which is less than that prescribed in the rates adopted in 1870.)

On February 23, 1894, an ordinance entitled "An ordinance regulating the rates and compensation allowed to be collected by any person or corporation supplying water for domestic use and private purposes to the inhabitants of the city of Los Angeles during the year commencing July 1, 1894, and ending June 30, 1895," was duly passed by the council of said city and approved by the mayor on February 23, 1894, and published February 24, 1894, providing that "the monthly rates to be collected by any person or corporation engaged in the business of supplying water to the inhabitants of the city of Los Angeles for domestic and private purposes for the year commencing July 1, 1894, and ending June 30, 1895, are hereby fixed as follows: For every tenement or dwelling house of not exceeding three living-rooms, occupied by a single family, 65 cents; for every tenement or dwelling house of four living-
236 rooms, occupied by a single family, 80 cents; for every tenement or dwelling house of five living-rooms, occupied by a

single family, $1.00; for every tenement or dwelling house of six living-rooms, occupied by a single family, $1.15; for every tenement or dwelling house of seven living-rooms, occupied by a single family, $1.30; for every tenement or dwelling house of eight living-rooms, occupied by a single family, $1.45; for every tenement or dwelling house of nine living-rooms, occupied by a single family, $1.60; for every tenement or dwelling house of ten living-rooms, occupied by a single family, $1.75; for every tenement or dwelling *hous* house of over ten living-rooms and occupied by a single family, for every additional room, 10 cents." (Here follow 32 other rates, each of which is less than that prescribed in the rates adopted in 1870.)

On February 25, 1895, an ordinance entitled "An ordinance regulating the rates and compensation allowed to be collected by any person or corporation supplying water for domestic and private purposes to the inhabitants of the city of Los Angeles during the year commencing July 1, 1895, and ending June 30, 1896, was duly passed by the council of said city and approved by the mayor March 5, 1895, and published March 8, 1895, providing that "the monthly rates to be collected by any person or corporation engaged in the business of supplying water to the inhabitants of the city of Los Angeles for domestic and private purposes for the year commencing July 1, 1895, and ending June 30, 1896, are hereby fixed as follows: For every tenement or dwelling house of not exceeding three living-rooms, occupied by a single family, 65 cents; for every tenement or dwelling house of four living-rooms, occupied by a single family, 80 cents; for every tenement or dwelling house of five living-rooms, occupied by a single family, $1.00; for every tenement or dwelling house of six living-rooms, occupied by a single family, $1.15; for every tenement or dwelling house of seven living-rooms, occupied by a single family, $1.30; for every tenement or dwelling house of eight living-rooms, occupied by a single family,
237 $1.45; for every tenement or dwelling house of nine living-rooms, occupied by a single family, $1.60; for every tenement or dwelling house of ten living-rooms, occupied by a single family, $1.75; for every tenement or dwelling house of over ten living-rooms and occupied by a single family, for every additional room, 10 cents." (Here follow 32 other rates, each of which is less than that prescribed in the rates adopted in 1870.)

On February 24, 1896, an ordinance entitled "An ordinance regulating the rates and compensation allowed to be collected by any person or corporation supplying water for domestic and private purposes to the inhabitants of the city of Los Angeles during the year commencing July 1, 1896, and ending June 30, 1897," was duly passed by the council of said city and approved by the mayor February 28, 1896, and published February 29, 1896, providing that "the monthly rates to be collected by any person or corporation engaged in the business of supplying water to the inhabitants of the city of Los Angeles for domestic and private purposes for the year commencing July 1, 1896, and ending June 30, 1897, are hereby fixed as follows: For every tenement or dwelling house of

not exceeding three living-rooms, occupied by a single family, 55 cents; for every tenement or dwelling house of four living-rooms, occupied by a single family, 65 cents; for every tenement or dwelling house of five living-rooms, occupied by a single family, 85 cents; for every tenement or dwelling house of six living-rooms, occupied by a single family, $1.00; for every tenement or dwelling house of seven living-rooms, occupied by a single family, $1.10; for every tenement or dwelling house of eight living-rooms, occupied by a single family, $1.25; for every tenement or dwelling house of nine living-rooms, occupied by a single family, $1.35; for every tenement or dwelling house of ten living-rooms, occupied by a single family, $1.50; for every tenement or dwelling house of
238 over ten living-rooms and occupied by a single family, for every additional room, 5 cents." (Here follow 32 other rates, each of which is less than that prescribed in the rates adopted in 1870.)

XLIII.

In January, 1882, the complainant Los Angeles City Water Company furnished to the council of the city of Los Angeles a statement of its transactions for the past year.

After the ordinance adopted February 21, 1882, establishing water rates, was passed by said council, and on the same day, the Los Angeles City Water Company presented the following protest:

"To the mayor and common council of the city of Los Angeles.

"GENTLEMEN: The Los Angeles City Water Company protests against the rates established by you fixing rates for houses less than $2.00; also against your fixing rates on any other basis than that of the contract and lease now existing between your body and the company.

"We also call your attention to the law of 1881 in regard to notice which you have neglected to conform to and which would appear to render members of your body liable to indictment for malfeasance in office."

During each of the succeeding years up to and including the present, and prior to March 1st of each year, the Los Angeles City Water Company has furnished to the council statements in writing, hereinafter set forth, each of said statements being followed by a list showing the name of each rate-payer and the amount paid by such rate-payer for water furnished him by said company during the year for which such statement was rendered.

The following are the statements above referred to:

239 *Statement of Los Angeles City Water Company, February 20, 1883.*

Filed February 20, 1883, with clerk of city council. Filed April 6, 1883, with county recorder.

To the honorable council of the city of Los Angeles.

GENTLEMEN: Attached you will find a statement showing the names of the consumers of water, the rates paid during the year preceding the date of the statement, also an itemized statement of the expenditures made for supplying water during the year preceding.

Accompanying the statement you will find another statement, showing, as far as we are able to show, the amount of money expended since commencing business the 1st of November, 1882, in the purchase, construction, and maintenance of the water works under the charge of the Los Angeles Water Company and the gross cash receipts for the same period from all sources.

In presenting this report we respectfully submit to your honorable body that, in our opinion, the law of March, 1881, providing for fixing rates and requiring statements from persons and corporations furnishing water to cities and towns for domestic purposes, and found on pages 54, 55, and 56 of the Laws of 1881, do not apply to the Los Angeles City Water Company or in any way alter the relations existing between the city of Los Angeles and the water company before the new constitution was adopted, and we therefore respectfully call your attention to the following statement of our relations with the city as we understand them:

On the 7th day of August, 1865, the city of Los Angeles was the owner of certain water works in the city of Los Angeles, and on that day leased them to one J. L. Sainsevaine for four years, with the privilege of continuing the lease for six years longer, being really a lease for ten years.

Mr. Sansevaine carried on the water works under his lease for less than three years, and on the 1st day of February, 1868, assigned
240 to Messrs. John S. Griffin, Prudent Beaudry, and Solomon Lazard, who for a few months operated the water works under the Sainsevaine lease.

On the 20th of July, 1868, the mayor and common council entered into an agreement with the above-named gentlemen by which the water works were to be leased to them, to take effect on their surrender of the Sainsevaine contract, and an ordinance adopted July 22, 1868, authorized the mayor to sign the lease on behalf of the city, which was done, and on the 25th of July, 1868, the Sainsevaine lease was surrendered.

On the 18th of August, 1868, the Los Angeles City Water Company was incorporated, as shown by the articles of incorporation, for the purpose of supplying the inhabitants of the city of Los Angeles with water for domestic purposes under the terms of the contract

made between the city and Griffin, Beaudry, and Lazard on the 20th of July, 1868.

On the 12th of June, 1869, the lease and contract was assigned to the water company.

On the 2nd of April, 1870, the legislature, on petition of the mayor and common council of Los Angeles, ratified the lease and contract under which the Los Angeles City Water Company have acted since the same was assigned to them, June 12, 1869, and a copy of which will be found on page 132 of Caswell's City Ordinances.

This lease, as you will observe by reference to page 135, provides that your body reserves the right to regulate the water rates, provided they do not reduce them below the rates charged at the time the contract was made.

These rates were determined by an investigation of the city council, who find the rates at its session of April 14, 1870, and, as will be seen by reference to vol. 7, page 92, of your records, fixed them at the rates existing when the contract was made. Those rates were the same as afterwards re-established, and to be found on page 238 of your City Ordinances.

241 The lease was made for thirty years, and at the expiration of that time the city is bound to pay the company for its improvements (page 133, City Ordinances) the value as determined by three referees.

There are many things provided by the lease for us to do and which we have always done. We have lived up to our contract in every respect and expect to do so until the end of the term.

But we submit to your body that in the contract which we hold there is no provision that we are to be required to furnish under oath statements such as are required by sections 2 and 3 of the act referred to, and that that law obliges us to do that which the city never asked of us to do and which the contract does not call for. In other words, the legislature, after having sanctioned the contract which we accepted and to the provisions of which we have conformed, insert new and important provisions materially affecting our rights under the contract, and which if enforced would greatly impair the obligations of the contract.

The lease gives you the right to fix the rates, not, however, to be less than what they were at a certain time, but by agreeing to the demand made upon us under the above law, and making the statement therein required, you are then to regulate our rates, not in accordance with the contract, but without reference to the contract. It will thus be seen that the law, taken as a whole, gives you the right and makes it your duty to fix our rates regardless of the terms of the contract, and for the purpose of establishing a basis you may compel us under oath to give you an itemized history of our business.

We do not pretend to say that this is not a constitutional law, but it does not apply to either persons or corporations in our situation and with a valid contract.

242 Sec. 10 of art. *L* of the Constitution of the U. S. provides that no State shall pass any law impairing the obligation of

contracts; and under this provision of the organic law of the land we claim exemption from the operation of the law referred to.

We have, however, no personal objection to making the statement required, and we consider that your body may properly consider it in the interest of the city, in view of the fact that the city will be obliged to pay for the improvements at the end of the term, to require us from time to time to give an account of the cost of the improvements and the expense of carrying on the work and the number of consumers and the prices paid for them; and we therefore, while denying any legal right on your part, either under the contract or any law of the State, to demand it, annex the following statement simply as an act of courtesy, feeling that the same desire to conciliate and please which actuates us in our present action will be returned by your honorable body to us when occasion might require.

WM. H. PERRY,
S. H. MOTT,
I. W. HELLMAN,
C. DUCOMMUN,
L. BERNARD,
WM. FERGUSON,
S. LAZARD,
W. J. BRODRICK,
Trustees.

Then follows "residence, names, and residences of consumers and prices paid for water for year preceding No. 1, 1882."

243 *Statement of Los Angeles City Water Company for the Period of Twelve Months from February 1st, 1882, to January 31st, 1883.*

Receipts.

From service connections	$5,244.00
" water rates	52,944.30
" rent	275.00
" sale of pipe	2,997.27
" borrowed, F. & M. bank	5,000.00

Disbursements.

For general expenses	$21,105.05
" ditch	7,636.07
" pipe	17,012.74
" reservoir	4,156.41
" disbursed to stockholders	24,799.60

W. H. PERRY,
Acting President of the Los Angeles City Water Company.
S. H. MOTT, *Secretary.*

Subscribed and sworn to, on information and belief, before me this 19th day of February, A. D. 1883.

[N. S.] ROB'T H. CHAPMAN.

Statement of Receipts and Expenditures of the Los Angeles City Water Company from its Incorporation to October 31st, 1883.

Receipts.

From water rent	$489,714.45
" amount paid by stockholders	79,500.00
" sale of bonds	100,000.00
" service connections	16,629.43
" rents, plaza property	3,655.30

Disbursements.

East Los Angeles reservoir	$2,586.47
Old reservoir	3,785.88
New do.	9,646.52
Ditch	54,236.04
Plaza fountain	1,167.48
" property	1,924.84
Pipe ac	151,349.39
Rent as per contract to city	9,354.89
General expense account	203,024.10
Distributed to stockholders	239,623.11
Paid ten bonds	10,000.00
Expense of purchasing water works, pipes, real estate, and water privileges used by the Los Angeles Water Company, nine hundred (900) shares of the Los Angeles City Water Company's stock, having a par value of one hundred dollars cash, and at that time estimated to be worth by the company at $50.00 per share, making	45,000.00

W. H. PERRY,
Acting President Los Angeles City Water Company.
S. H. MOTT, *Secretary.*

Subscribed and sworn to, on information and belief, excepting as to matter of value of shares given for the purchase of water works, pipes, real estate, and privileges, which we only know of and concerning from statement made to us by officers and stockholders of the company, before me this 19th day of February, A. D. 1883.

[N. S.] ROB'T H. CHAPMAN, *Notary.*

244 *Statement of Los Angeles City Water Company.*

Filed January 29, 1884, with clerk of city council; filed Feb. 6, 1884, with county recorder.

To the honorable council of the city of Los Angeles:

The Los Angeles City Water Company, protesting against the right of your hon. body to demand the same, but only for the purpose of giving information and with the same view as to the rights

of the company expressed in our former statement, hereby submit to your hon. body a detailed statement, showing the name of each water-rate payer, his place of residence, and the amount paid for water by each during the year preceding the date of this statement, and also showing all revenue derived from all sources and an itemized statement of expenditures made for supplying water during the time intervening since our last report. This statement embraces all receipts and expenditures for the last year, and we respectfully refer your hon. body to our last report for all the matter provided for in section 3 of the act of March 7, 1881, relating to water companies. We fail to append the statement required in section 3 to this statement, and instead thereof refer to our report on file of last year, and which contains all that is required in section 3, there being nothing to add to it except that contained in the annual reports heretofore and now submitted.

Statement of the Los Angeles City Water Company for the Period of Twelve Months from November 1, 1882, *to November* 1, 1883.

Receipts.

Service connections	$7,190.00
Water rents	63,684.00
Rent of plaza property	231.00
Borrowed from F. & M. bank	20,000.00
Sale of old iron, wood, etc	1,500.00

Disbursements.

Ditch	$5,077.00
Pipe	28,914.00
Reservoir	4,416.00
Plaza property	2,436.00
Bills payable	10,000.00
General expenses	18,477.00

S. H. MOTT,
Secretary L. A. C. W. Co.

Sworn to and subscribed before me this 29th day of January, 1884.
[SEAL.] ROB'T H. CHAPMAN.

245 *Report of the Los Angeles City Water Company, February* 2, 1885.

Filed March 6th, 1885, with county recorder.

To the honorable council of the city of Los Angeles:

The Los Angeles City Water Company, protesting against the right of your hon. body to demand the same, but only for the purpose of giving information and with the same view as to the rights of the company expressed in our former statement, hereby submit to your hon. body a detailed statement, showing the name of each water-rate payer, his place of residence, and the amount paid for water by each during the year preceding the date of this statement,

and also showing all revenue derived from all sources and an itemized statement of expenditures made for supplying water during the time intervening since our last report. This statement embraces all receipts and expenditures for the last year, and we respectfully refer your hon. body to our first report for all the matter provided for in section 3 of the act of March 7, 1881, relating to water companies. We fail to append the statement required in section 3 to this statement, and instead thereof refer to our report on file February 20, 1883, which is hereby referred to and made a part hereof, and which contains all that is required in section 3, there being nothing to add to it except that contained in the annual reports heretofore and now submitted.

Statement of Los Angeles City Water Company for the Period of Twelve Months from November 1, 1883, *to November* 1, 1884.

Receipts.

Service connections	$8,605.65
Pipe	3,710.59
Plaza property	550.00
Bills payable, F. & M. bank	10,000.00
Water rents	81,971.80

During the same time the disbursements have amounted to the sum of—

Pipe	42,652.14
General expense, including taxes	13,164.20
Interest	6,825.00
Ditch	3,511.90
Reservoir	9,651.05
Plaza property	381.94
Five bonds redeemed	5,000.00
Dividends	24,799.92

W. H. PERRY, *President.*
S. H. MOTT, *Secretary.*

Subscribed and sworn to before me this 21st day of January, A. D. 1885.

JAS. C. KAYS,
Notary Public.

246 *Report of Sales, Los Angeles City Water Company, November* 1, 1884, *to November* 1, 1885.

Filed January 28, 1886.

Statement same as previous one.

Statement of Los Angeles City Water Company for the Period of Twelve Months from November 1, 1884, *to November* 1, 1885.

Receipts.

Service connections	$4,955.00
Rents of plaza property	410.00
Sale of pipe	1,145.85
Bills payable	4,000.00
Cash paid by stockholders on increase of capital stock	51,650.00
Water rents	100,062.00

During the same time the disbursements have amounted to the sum of—

Pipe expense	$37,004.02
Interest "	6,477.56
General "	21,316.38
Ditch "	8,950.73
Reservoir "	756.91
Dividend "	38,298.48
Bills payable "	34,000.00

LOS ANGELES CITY WATER COMPANY,
By W. H. PERRY, *President*,
" S. H. MOTT, *Secretary*.

Sworn to and subscribed before me this 28th day of January, 1886.

JAMES C. KAYS,
Notary Public.

247 *Annual Statement of Los Angeles City Water Company for Year Ending October* 31, 1886.

Filed January 28, 1887.

Statement is the same as previous one, excepting that it ends after the words " Act of March 7, 1881, relating to water companies."

Statement of Los Angeles City Water Company for the Period of Twelve Months from November 1, 1885, *to October* 31, 1886.

Receipts.

New issue of stock sold	$51,650.00
Service connections	6,503.00
Pipe sold	2,697.20
Rent of brick shop	250.00
Sundries	97.00
Water rents	118,779.84

During the same time the disbursements have amounted to the sum of—

New improvements	$52,528.12
Ditch	7,913.74
Pipe	29,698.48
General expenses	27,788.23
Reservoir	658.29
Ling property	1,403.30
Interest	5,089.00
Bills payable	5,000.00
Dividends	46,430.50

W. H. PERRY, *President.*
S. H. MOTT, *Secretary.*

STATE OF CALIFORNIA, }
County of Los Angeles, } ss:

Subscribed and sworn to before me this 11th February, 1887.
ROB'T H. CHAPMAN,
Notary Public.

Subscribed and sworn to before me this 1st day of March, 1887, by W. H. Perry.
FREEMAN G. TEED,
Clerk of the Council of the City of Los Angeles.

248 *Account of Sales of Water by Los Angeles City Water Company from November* 1, 1886, *to November* 1*st*, 1887.

Statement same as previous one, except that it ends with "This statement embraces all receipts and expenditures for last year."

Statement of the Los Angeles City Water Company for the Period of Twelve Months from November 1, 1886, *to November* 1, 1887.

Receipts.

Pipe sold	$9,821.38
Bills payable	50,000.00
Water rents	148,041.85
General expense (warrants cancelled)	1,171.65
Service connections	16,764.00
New imp't	83.87
Ditch	5.10

During the same time the disbursements have been as follows, to wit:

New improvement expense		$34,881.66
Reservoir	"	13,206.10
Ditch	"	3,120.07
General	"	70,588.47

Dividend	expense	33,064.00
Interest	"	5,643.75
Pipe	"	64,889.12
Bills payable	"	5,000.00

LOS ANGELES CITY WATER COMPANY,
By W. H. PERRY, *President*,
" S. H. MOTT, *Secretary*. [CORPORATION SEAL.]

Sworn to and subscribed before me this January, 1888.

——— ———.

249 *Report from L. A. City Water Co., Filed January* —, 1888, *for Year Ending November* 1*st*, 1888.

Statement same as last one.

Statement of the Los Angeles City Water Company for the Period of Twelve Months from November 1, 1887, *to November* 1, 1888.

Receipts.

Bills payable	$330,000.00
" receivable	250.00
Plaza property	5,024.02
Pipe account	8,207.79
Interest	2,791.67
General expense	841.25
Service connections	20,819.00
Water rents	195,422.65

During the same time the disbursements have been as follows, to wit:

Bills payable		$145,000.00
" receivable		50,000.00
Plaza property		10,625.57
Pipe	expense	169,185.27
Interest	"	15,915.81
General	"	110,717.93
Ditch	"	2,095.00
New improvements	"	265.06
Reservoir		1,701.11
Dividend		45,465.00

LOS ANGELES CITY WATER COMPANY,
By W. H. PERRY, *President*,
" S. H. MOTT, *Secretary*. [CORPORATION SEAL.]

Sworn to and subscribed before me this 18th day of January, 1889.

[N. S.]

T. E. ROWAN,
Notary Public.

250 *Statement of the Los Angeles City Water Company from November 1, 1888, to November 1, 1889.*

To the council of the city of Los Angeles:

The undersigned, The Los Angeles City Water Company, hereby submit to your honorable body a detailed statement, showing the name of each water-rate payer, his or her place of residence, and the amount paid for water by each of said water-rate payers during the year preceding the date of this statement, and also showing all revenue derived from all sources and an itemized statement of expenditures made for supplying water during the time intervening since the last statement made by the undersigned to your honorable body.

In making this statement the undersigned is not to be held or deemed in any manner as waiving its rights under its contract or agreement with the city of Los Angeles in relation to furnishing the inhabitants of the city with water; and it does now, as it has ever heretofore, assert and claim that the water rates to be charged and collected for the supplying of water are fixed by said contract and are not subject to revision or changed by your honorable body; but the undersigned is now and ever has been ready and willing at all times to furnish your honorable body with any information that may be necessary or reasonable for a full understanding of the business of this company, and this statement is rendered for the purpose of placing before your honorable body information as to the facts of the business of this company that the undersigned deems reasonable that the city should know in view of the rights of the city under said contract; and the undersigned protests against any use being made of this report as a basis upon which to fix the rates that shall be charged and collected for water furnished to the inhabitants of the city of Los Angeles.

All of which is respectfully submitted.

Statement of the Los Angeles City Water Company for the Period of Twelve Months from November 1, 1888, to November 1, 1889.

Receipts.

Bills receivable	$50,000.00
Service connections	9,631.00
Pipe sundries	3,469.56
Plaza property	600.00
General expense	53.50
Water rents	220,592.58
	$284,346.64

During the same time the disbursements have amounted to the sum of $294,606.02.

Pipe	$85,467.69
Plaza property	634.36
Ditch	1,766.80
General expense	114,337.17
Interest	18,000.00
Dividends	74,400.00
	$294,606.02

LOS ANGELES CITY WATER COMPANY,
By W. H. PERRY, *President*,
" S. H. MOTT, *Secretary*.

Sworn to and subscribed before me this 29th day of January, 1890.
[N. S.]
N. LINDENFELD,
Notary Public.

251 *List of Consumers of the Los Angeles City Water Company, Their Residence, Street, and Amount Paid from November* 1, 1889, *to November* 1*st*, 1890.

Filed January 31, 1891.

Statement same as last one, except that it is signed:

"LOS ANGELES CITY WATER COMPANY,
By W. H. PERRY, *President*,
" S. H. MOTT, *Secretary*.

Subscribed and sworn to before me this 31st day of January, 1891, by W. H. Perry, president, and S. H. Mott, secretary, of the Los Angeles City Water Company.
[N. S.]
FREDERICK HARKNESS,
Notary Public."

Statement of the Los Angeles City Water Company for the Period of Twelve Months from November 1, 1889, *to November* 1, 1890.

Receipts.

Services sold	$5,161.00
Pipe sundries	1,370.05
Plaza property	600.00
Water rents	225,021.25
	232,152.30

During the same time the disbursements have amounted to the sum of $246,437.11.

Pipe	$25,113.57
Plaza property	940.09
Reservoir	34.25

Ditch and flume	5,860.26
Interest	18,000.00
General expenses	122,088.94
Dividends	74,400.00
	246,437.11

252 *Report from L. A. City Water Co., Filed February* 1, 1892, *for Year Ending November* 1, 1891.

Statement of the Los Angeles City Water Company for the period of twelve months from November 1, 1890, to November 1, 1891.

Receipts.

Material sold and other items	$1,034.35
Services and labor	4,816.00
Rents	600.00
Water rents	238,956.65
	245,407.00

Expenditures.

For general construction acc't	$53,914.36
Maintenance	48,815.13
General expense and repair	93,441.19
Interest on bonds and float, &c	27,519.80
Rights of way	125.00
Plaza property	10.24
Balance	21,581.28
	245,407.00

Statement same as last one, being signed:
"LOS ANGELES CITY WATER COMPANY,
By W. H. PERRY, *President*,
" S. H. MOTT, *Secretary*,"

but not sworn to.

253 *Report of the City Water Company for Year* 1892.

Filed January 31, 1893.

Statement of the Los Angeles City Water Company for the Period of Twelve (12) *Months from November* 1, 1891, *to October* 31, 1892.

Receipts.

Material sold	$745.93
Services and material	7,143.60
Rents	25.00
Water rents	246,487.33
	$254,401.86

Expenditures.

General construction acc't	$57,556.27
Do. expense, repairs, etc., account	99,398.54
Maintenance "	36,952.24
Interest on bonded debt	18,000.00
" " overdraft, etc.	6,427.59
Dividends paid	62,000.00
	$280,334.64

Statement same as last one, but not signed or sworn to.

254 *Statement of L. A. City Water Company for* 1893.

Filed January 24th, 1894.

Statement same as last one, but signed:

"LOS ANGELES CITY WATER COMPANY,
By S. H. MOTT, *Secretary*,"

but not sworn to.

Statement of the Los Angeles City Water Company for the Period of Twelve (12) *Months from November* 1, 1892, *to October* 31, 1893.

Receipts.

Material and labor sold	$1,714.43
Services " " "	10,274.80
Rent of house	16.00
Bills payable	275,569.00
Other indebtedness	10,347.32
Water rents	289,066.30
Total receipts	$586,987.85

Expenditures.

General construction acc't	$103,598.06
Maintenance	82,230.21
General expenses, repairs, etc	114,858.54
Interest paid	29,898.80
Dividend acc't	46,872.00
Citizen's Water Company's plant	160,316.50
East Side Spring Water Co.'s plant	18,000.00
Force main	14,681.46
Pump station	11,848.94
Crystal Springs Land and Water Company	4,500.00
Bills payable	20,000.00
Total expenditures	$606,804.51

255 *Report of the City Water Company*, 1894.

Filed January 31, 1895.

Statement of the Los Angeles City Water Company for the Period of 12 *Months from November* 1, 1893, *to October* 31, 1894.

Receipts.

Bills payable	$86,500.00
Services sold	16,457.19
Sundries	1,477.22
Water rents	345,691.64
	$450,126.05

Expenditures.

General construction account	106,801.28
" expense "	96,345.10
Maintenance "	50,212.05
Interest "	36,132.39
Land "	3,045.00
Pump station "	2,325.95
Dividend "	96,720.00
Bills payable "	65,000.00
	$451,126.05

Statement same as last one, being signed:

"LOS ANGELES CITY WATER COMPANY,
Per S. H. MOTT, *Secretary*,"

but not sworn to.

256 *City Water Company Report*, 1895.

Filed January 31, 1896.

Statement same as last one, signed:

"LOS ANGELES CITY WATER COMPANY,
By S. H. MOTT, *Secretary*,"

but not sworn to.

Statement of the Los Angeles City Water Company for the Period of 12 *Months from November* 1, 1894, *to October* 31, 1895.

Receipts.

Material and labor	$1,089.12
Service connections	24,085.35
Rent for house	96.00
Water rents	392,636.82
Bills payable	75,000.00
Total	$492,907.29

Expenditures.

General expense acc't	$47,007.51
" construction acc't	295,702.01
Maintenance	57,513.47
Interest	33,825.24
Bills payable	40,000.00
Land	2,429.50
Dividend	58,528.00
Total	$535,005.73

257 *Los Angeles City Water Company Report*, 1896.

Filed January 30, 1897.

Statement same as last one, signed:

"LOS ANGELES CITY WATER COMPANY,
By S. H. MOTT, *Secretary*,"

but not sworn to.

Statement of the Los Angeles City Water Company for the Period of Twelve Months from November 1, 1895, to October 31, 1896.

Receipts.

Material and labor	$1,251.33
Service connections	16,404.00
Rents	96.00
Water rents	422,220.46
	$439,971.79

Expenditures.

General construction account	$173,298.76
Expense "	92,358.88
Maintenance "	75,844.31
Interest "	35,457.84
Dividend "	68,200.00
	$445,159.79

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XLIV.

It is further stipulated between the parties hereto that this court may take judicial notice of all statutes passed by the legislature of the State of California in any manner affecting any question in controversy here, and whether such statute be public or private in its nature, in like manner and to the full extent as though such statute were fully set forth in this stipulation.

WHITE AND MONROE,
J. S. CHAPMAN,
Att'ys for Pl'ff.
W. E. DUNN,
LEE & SCOTT,
Solicitors for Defendants.

(Endorsed:) No. 734. U. S. circuit court, southern district of California. Los Angeles City Water Co. *et al. vs.* City of Los Angeles *et al.* Stipulation. Filed Feb. 14, 1898. Wm. M. Van Dyke, clerk.

259 In the Circuit Court of the United States, Ninth Circuit, Southern District of California. In Equity.

LOS ANGELES CITY WATER COMPANY, CRYSTAL SPRINGS Land and Water Company, and S. G. Murphy, Complainants,

vs.

THE CITY OF LOS ANGELES, HERMAN SILVER, Z. D. Matthuss, L. M. Grider, E. L. Blanchard, C. H. Toll, James Ashman, E. L. Hutchinson, F. M. Nickell, and F. L. Baker, Composing the Council of the City of Los Angeles, Defendants. } No. 734.

The above-named defendants, conceiving themselves aggrieved by the decree made and entered on the 20th day of June, 1898, in the above-entitled cause, do hereby appeal from said order and decree to the Supreme Court of the United States, for the reasons specified in the assignment of errors which is filed herewith, and they pray that this appeal may be allowed, and that a transcript of the records, pleadings, and papers upon which said order and decree was made, duly authenticated, may be sent to said Supreme Court.

Dated September 7th, 1898.

W. E. DUNN,
LEE & SCOTT,
ALBERT CRUTCHER,
Solicitors for Appellants.

The foregoing claim of appeal is allowed.

Dated September 7th, 1898.

OLIN WELLBORN, *Judge.*

260 Endorsed: Eq. No. 734. U. S. circuit court for the southern district of California. Los Angeles City Water Co. *et al. vs.* City of Los Angeles *et al.* Petition on appeal. Filed Sep. 7, 1898. Wm. M. Van Dyke, clerk. Lee & Scott and W. E. Dunn, A. Crutcher, solicitors for appellants.

261 In the Circuit Court of the United States, Ninth Circuit, Southern District of California. In Equity.

LOS ANGELES CITY WATER COMPANY, CRYSTAL SPRINGS Land and Water Company, and S. G. Murphy, Complainants,

vs.

THE CITY OF LOS ANGELES, HERMAN SILVER, Z. D. Matthuss, L. M. Grider, E. L. Blanchard, C. H. Toll, James Ashman, E. L. Hutchinson, F. M. Nickell, and F. L. Baker, Composing the Council of the City of Los Angeles, Defendants. } No. 734.

Assignment of Errors on Appeal of Defendants to the Supreme — of the United States.

The defendants and appellants on their appeal to the Supreme Court of the United States from the decree made and rendered in the above-entitled cause make and assign the following specifications of error, and say that the decree in said cause is erroneous and against the just rights of said appellants for the following reasons:

First. Because the court overruled each and all of the exceptions taken by said appellants to the report of the special master on the exceptions of said appellants to the bill of complaint herein, whereas the court should have sustained each and all of said exceptions to said report.

Second. Because the court overruled the demurrer of said appellants to the bill of complaint herein, whereas the court should have sustained said demurrer on each and all of the grounds specified in said demurrer.

262 Third. Because the court rendered a decree in favor of complainants, whereas the court should have rendered a decree for said appellants on the bill and answer, inasmuch as it appeared from said bill of complaint that there was no valid contract between the complainant The Los Angeles City Water Company and the city of Los Angeles by reason of which the council of said city was prevented from lowering water rates and compensation for supplying water to said city and its inhabitants below the rates charged by the parties of the second part mentioned in the contract of date July 20, 1868, set forth in said bill.

Fourth. Because the court decided that the mayor and common council of the city of Los Angeles had authority at the time of the execution of the contract of date July 20, 1868, to execute the same so far as relates to the provision that said mayor and common council of the city of Los Angeles should not reduce water rates or so fix the price thereof to be less than those charged for water at the date of the execution of said contract, whereas said such municipality did not have such authority, and the only authority under which said mayor and common council of the city of Los Angeles could enter into a contract for the supplying of water to the inhab-

itants of said municipality was the 11th section of the act of the legislature of the State of California entitled "An act to provide for the incorporation of cities," passed March 11, 1850, which gave authority to the city council to make by-laws and ordinances not repugnant to the laws of said State to provide for supplying the city with water, and the 3rd section of an act of said legislature entitled "An act to provide for the incorporation of water companies," passed May 3, 1852, which gave authority to municipal corporations to enter into contracts only with corporations organized under the laws of said State for supplying water to such municipalities on condition that such contracts should not be made for a longer
263 term than twenty years, nor take from such city the right to regulate the rates for water, and the act of said legislature, entitled "An act for the incorporation of water companies," approved April 22, 1858, which authorized only corporations organized under the laws of said State for supplying water to cities to exercise the franchise of supplying water to such cities and collecting rates and compensation therefor, subject to the condition that the water rates should be fixed by commissioners, one of which was to be appointed by such company, one by the city, and one by the two thus selected, which provision was subject to amendment in any respect by the State, either through its legislature or by a change in its constitution, and there was no other act or statute in existence which authorized the execution of said contract of date July 20, 1868.

Fifth. Because the court decided that said section 3 of said act of May 3, 1852, did not apply to said contract of date July 20, 1868, whereas said contract was within the letter of said statute, and said contract, in so far as it purported to deprive said mayor and common council of the city of Los Angeles of the unrestricted right to regulate water rates, was contrary to the policy of said State as declared in the statutes then in existence relating to said subject, and especially as declared in said acts of May 3, 1852, and April 22, 1858.

Sixth. Because the court decided that said 11th section of said act of March 11, 1850, gave power to said mayor and common council of the city of Los Angeles to enter into said contract of date July 20, 1868, in so far as the same restricted said municipality in regulating water rates and compensation to be charged by the parties of the second part to said contract and their successors in interest for water supplied to said city and its inhabitants, whereas authority to so provide was not fairly deducible from said act or necessary to the general power given of providing for supply-
264 ing said city with water, and nothing contained in said act shows an intention on the part of the legislature to deprive said State of its sovereign power of regulating such water rates and compensation, to be exercised in such manner as said State should thereafter by its constitution or statutes determine.

Seventh. Because the court decided that the bill of complaint stated a case or contained any matter of equity entitling the complainants or any of them to any relief against these appellants or any of them, whereas if the contract set forth in said bill is valid

so far as concerns the provision purporting to restrict the mayor and common council of the city of Los Angeles in regulating water rates, and had the effect of preventing the State of California, through its constitution or its legislature, from reducing the water rates to be charged by the parties of the second part to said contract and their successors in interest below those which were charged by said parties of the second part at the date of said contract, then the ordinance fixing water rates sought to be annulled is void on its face, and should operate in nowise to injure said complainants or any of them, and it does not appear from said bill of complaint that any act had been done or attempted or intended to be done by said city of Los Angeles to prevent said Los Angeles City Water Company from collecting such water rates as it was entitled to collect under the provisions of said contract, nor does it appear from said bill that said city of Los Angeles was interfering with any of the property of said complainants or any of them or otherwise attempting to enforce any of the provisions of said ordinance, nor does it appear from said bill of complaint that said ordinance applied to said Los Angeles City Water Company if said company was exempted from the operation thereof by reason of said contract; and it appears from said bill of complaint that at least one corporation, to wit, the East Side Spring Water Company, was at the time of the adoption of said ordinance engaged in supplying the inhabitants of a
265 portion of said city with water, and said last-mentioned company was not exempted from regulation by virtue of said contract, and it does not appear from said bill of complaint but that other corporations and persons were at the time of the adoption of said ordinance engaged in supplying water to the inhabitants of said city of Los Angeles; which said corporations and persons were not exempted from the regulation with respect to water rates by virtue of said contract.

Eighth. Because the court decided that complainants had not an adequate remedy at law, whereas it appeared that no irreparable injury could result to said complainants, or any of them, by reason of said last-mentioned ordinance, but, on the contrary, complainants had a full and adequate remedy at law for the enforcement of all of their rights with regard to the collection of water rates under and by virtue of the provisions of said contract, and *ss* it does not appear from said bill of complaint that a multiplicity of actions or any action would have been required to enforce the rights of complainants to collect the water rates which they were entitled to collect by virtue of the provisions of said contract.

Ninth. Because the court decided that said bill of complaint stated a case and contained matter of equity entitling the complainants to relief against said city of Los Angeles, whereas said bill did not state a case against said city, inasmuch as said last-mentioned ordinance was not passed by said city of Los Angeles as a legislative act, but was passed by the council of said city in obedience to the requirement of the constitution of said State, and therefore said city of Los Angeles was in nowise concerned in or responsible for said ordinance *of* the water rates therein purported to be established.

Tenth. Because the court decided that the complainant Los Angeles City Water Company was not bound by the provisions of the constitution of the said State with relation to the fixing of water rates, whereas said company was bound by said provisions,
266 inasmuch as it appeared that said company was incorporated under and by virtue of the provisions of said act entitled "An act to provide for the incorporation of water companies," approved April 22, 1858, and had no other rights than those given by said act and the other statutes of said State; which said act and all of said statutes were by virtue of the constitution of said State in force at the time of the incorporation of said company subject to amendment by said State, either through its legislature or its constitution, and said act and other statutes were by article XIV of the constitution of said State adopted on the 3rd day of March, 1879, and ratified by vote of the people of said State on the 7th day of May, 1879, so amended that the council of said city was thereafter given power to regulate the rates and compensation for water furnished to said city and its inhabitants by said company, subject only to the implied condition that such rates and compensation should be reasonable; and it appears from said bill of complaint and the evidence that said company was incompetent to take or hold a contract which had the effect of preventing said State from reducing the rates and compensation for water furnished to the inhabitants of said city below those which were charged by the parties of the second part to said contract at the time of the execution thereof.

Eleventh. Because the court decided that the council of said city had no authority to pass said last-mentioned ordinance, whereas said council did have such authority, inasmuch as said council was required by the constitution of said State to pass said ordinance, and said council could not refuse to do so by reason of the fact (if the same existed) of said Los Angeles City Water Company being exempted from regulation with regard to water rates, and said council had no authority to make said ordinance applicable to any particular persons or corporations supplying water to the inhabitants of said city, but was required by the constitution of said State to make said ordinance general.

267 Twelfth. Because the court decided that said last-mentioned ordinance was wholly invalid, whereas it appears from the pleadings and evidence that said city of Los Angeles, as it existed at the time of the passage of said ordinance, included large portions of territory, amounting to from ten to fifteen square miles, which were not embraced within the limits of said city as the same existed either in the year 1868 or in the year 1870, and that said Los Angeles City Water Company was engaged in supplying water to the in-abitants of said additional portions of territory, and said contract of date July 20, 1868, did not apply to said additional portions of territory nor prevent said State through its legislature or constitution from regulating rates to be charged by said company for water supplied to such additional territory.

Thirteenth. Because the court decided that said mayor and com-

mon council of the city of Los Angeles had authority to enter into said contract of date July 20, 1868, so far as the same had the effect of granting a franchise for constructing and operating water works, and for using the streets and other public places of said city for the purpose of laying pipes and other water works therein, and for collecting rates for water supplied to the inhabitants of said city, whereas said municipality did not have such authority, inasmuch as the only authority claimed by complainants is said 11th section of said act of March 11, 1850; which said section did not have the effect of conferring such power, but only authorized said mayor and common council of the city of Los Angeles to contract with such individuals or corporations which might have acquired such franchise from the sovereign power of the State.

Fourteenth. Because the court decided that the mayor and common council of the city of Los Angeles had power to enter into said contract of date July 20, 1868, in so far as the same provided that said mayor and common council of said city of Los Angeles should not reduce water rates below those charged by the parties
268 of the second part thereto at the time of the execution thereof, whereas said municipality had no such power, inasmuch as if said mayor and common council of the city of Los Angeles then had authority to regulate the rates and compensation for water supplied to its inhabitants, neither such municipality nor its common council could by any contract or otherwise surrender such power, but was bound to retain such power unimpaired and to transmit it to its successors; but if said municipality or its common council did not have authority to regulate such water rates, then it could enter into no contract by which the State of California or said municipality or its council, by power thereafter to be given by said State, would be deprived of the right to regulate such water rates.

Fifteenth. Because the court decided that said mayor and common council of the city of Los Angeles had authority to execute said contract of date July 20, 1868, in so far as the same prevented said municipality from reducing water rates below those which were charged by the parties of the second part to said contract at the time of the execution thereof, whereas said municipality had no such authority, inasmuch as said provision (if the same be held to fix said water rates so charged at the time of the execution of said contract by the parties of the second part thereto as minimum rates, without regard to the fact whether such rates are reasonable or not) establishes an arbitrary standard of rates, without regard to their reasonableness, and was not authorized by the laws of the State of California in existence at the time of the execution of said contract, but was contrary to such laws and the policy thereof and contrary to public policy.

Sixteenth. Because the court decided that said provision of said contract purporting to prevent said mayor and common council of the city of Los Angeles from reducing water rates below those which were charged by the parties of the second part to said contract at

the time of the execution thereof had the effect of preventing the State of California, either through its legislature or
269 its constitution, from providing for the regulation of such water rates, or from authorizing the council of said municipality to regulate such water rates without regard to the provisions of said contract, whereas said contract, properly construed, did not purport to restrict said State in any way from exercising its sovereign power of regulating said rates, and said provision had reference only to said municipality, and did not apply to the council of said city, acting under and by virtue of said article XIV of said constitution, and it appears from the pleadings and evidence that said provision was inserted by reason of the fact that said municipality was leasing its water works to said parties of the second part, and that the right of regulating the water rates was (subject to said provision against the reduction of the same) reserved by said municipality as landlord and as a right arising out of its ownership of said water works, and such reservation was not made by virtue of any governmental power vested in such municipality by the laws of said State to regulate the rates and compensation for supplying water to the inhabitants of said city by persons or corporations not using the water works belonging to said municipality.

Seventeenth. Because the court decided that the rates fixed by said last-mentioned ordinance were less than those charged by the parties of the second part to said contract of date July 20, 1868, at the time of the execution thereof, whereas there was no evidence to show what rates were charged by said parties of the second part at the time of the execution of said contract, and especially there was no evidence to show that many of the uses for which rates were authorized to be charged by said ordinance existed at the time of the execution of said contract, and the only evidence which was introduced by complainants for the purpose of showing what water rates were charged by said parties of the second part at the time of the execution of said contract was the reports of committees
270 of the common council — said municipality made long after the execution of said contract, which evidence was hearsay and did not establish any of the facts stated in said reports; nor did said reports show in fact that the rates therein mentioned or any of them were those charged by said parties of the second part on or before the 23rd day of July, 1868, and the evidence was insufficient to establish the fact that the rates mentioned in said ordinance or any of them were less than those charged by said parties of the second part at the time of the execution of said contract.

Eighteenth. Because the court decided that the complainants were damaged by the reduction of any of the rates charged by said parties of the second part to said contract, of date July 20, 1868, whereas the evidence showed that said last-mentioned ordinance allowed said complainant, Los Angeles City Water Company, to collect rates and compensation for water furnished for many purposes and uses besides those for which said parties of the second part to said contract charged and collected rates and compensation at the time of the execution of said contract, and it did not appear

from the evidence but that such additional rates and compensation exceeded the loss which said Los Angeles City Water Company might have sustained by reason of the reduction of the rates and compensation which said mayor and common council of the city of Los Angeles bound itself in and by said contract not to reduce, and it did not appear from the evidence but that said Los Angeles City Water Company would have received in the aggregate for rates and compensation authorized to be charged and collected by said ordinance a sum in excess of that which said company would have collected had said company been authorized by said ordinance to collect only the rates and compensation which said mayor and common council of the city of Los Angeles bound itself in and by said contract not to reduce.

Nineteen. Because the court decided that said Los Angeles City Water Company was authorized, under and by virtue of the
271 provisions of said contract of date July 20, 1868, to collect water rates and compensation irrespective of the fact as to whether or not they were reasonable, whereas it appears from the pleadings and the evidence that said contract, properly construed, prohibited the reduction by said municipality of rates below those charged by the parties of the second part to said contract at the time of the execution thereof, only on condition that such minimum rates should be reasonable, and it appeared from the evidence, and there is no allegation to the contrary in the bill of complaint, that the rates which were allowed by said last-mentioned ordinance were reasonable, and that the same afforded to said Los Angeles City Water Company a reasonable and an immense interest upon the investment of said company over and above the cost and expense of delivering water to the inhabitents of said city.

Twentieth. Because the court decided that said contract of date July 20, 1868, was a reasonable one and was a reasonable exercise of the power given to said mayor and common council of the city of Los Angeles in and by the 11th section of said act of March 11, 1850, whereas said act gave said municipality the power to pass reasonable by-laws and ordinances, and the ordinance under which said contract was adopted and said contract itself were unreasonable, so far as they gave to said parties of the second part to said contract (if they had that effect) the right to collect unreasonable water rates.

Twenty-first. Because the court decided that said complainant, Los Angeles City Water Company, had not violated the provisions of said contract of date July 20, 1868, prohibiting the parties of the second part to said contract from taking from the Los Angeles river for the use of said water works leased by said contract more than ten inches of water without the previous consent of the mayor and common council of said city and prohibiting said parties of the second part from taking from said river any water except
272 that which might be necessary for domestic purposes, as specified in said contract, whereas the evidence showed that ever since the 20th day of October, 1896, up to and including the hearing of this cause, said Los Angeles City Water Company had

continuously taken from said Los Angeles river, at a point above the northern boundary of said city, a quantity of water varying from 400 to 1,000 inches, measured under a four-inch pressure, for the purpose of distributing and selling the same in said city, and that such taking of said water (so far as related to the excess over ten inches of water, measured under a four-inch pressure) was not only not taken with the consent of said city of Los Angeles, but said water was taken against the express prohibition of said city; and it appeared from the evidence that the ten inches of water mentioned in said contract, either meant ten inches of water measured under a four-inch pressure, or that said term was meaningless, and therefore that said Los Angeles City Water Company had no right under said contract to take any water from said river without the consent of said city.

Twenty-second. Because the court decided that the city of Los Angeles, either while existing under the name of the mayor and common council of the city of Los Angeles or under the name of the city of Los Angeles, had ever given its consent to the taking of more than ten inches of water, measured under a four-inch pressure, by said Los Angeles City Water Company, whereas there was no evidence to show that such consent was ever given; but, on the contrary, it appeared that said Los Angeles City Water Company took all the water which was ever taken by it from said river without asking or obtaining the consent of said city, and that such taking of said water by said company ever since the 6th day of June, 1879, was in direct violation of an ordinance of said city duly passed and approved on said date.

Twenty-third. Because the court decided that said city of Los Angeles was estopped to withdraw its consent on the 20th day of October, 1896, to said Los Angeles City Water Company's
273 taking water from said river in excess of said quantity of ten inches, measured under a four-inch pressure, whereas the evidence was insufficient to show such estoppel, as it appears from the bill of complaint and the evidence that the parties of the second part to said contract and their successors in interest were obligated to construct works sufficient to supply the inhabitants of said city with water during the term of thirty years from the execution of said contract, irrespective of the fact of whether or not they would be able to obtain a sufficient supply, and they were bound in and by said contract not to take any water from said river in excess of the quantity of ten inches therein specified unless said municipality should consent thereto, and said parties of the second part and their successors in interest would have forfeited their rights under said contract had they failed to construct said works, and therefore said works were not constructed by said Los Angeles City Water Company on the faith of any implied permission of said city to use the water of said river free and without charge, but, on the contrary, said company was by said contract obligated to procure water elsewhere in case said city should at any time during the period of said contract refuse to allow said company to take water from said river in excess of said quantity of ten inches, and the evidence was in-

sufficient to show any element of estoppel against said city's withdrawing its consent to the use of the water of said river in excess of said quantity of ten inches, nor was said city ever authorized to give a consent which it could not withdraw at pleasure.

Twenty-fourth. Because the court decided that said ordinance sought in said bill of complaint to be annulled had the effect of reducing water rates below those which were charged by the parties of the second part to said contract at the time of the execution thereof, whereas there was no evidence to show such reduction,

but appeared from the evidence and the pleadings that said
274 Los Angeles City Water Company was charging and collecting said rates not only for the use of its water works and of water controlled by it, but also for the use of water taken from said Los Angeles river in violation of the terms of said contract, which last-mentioned water belonged to said city of Los Angeles, and it therefore appeared from the evidence that said water rates specified in said ordinance were based not only on the value of the water works constructed by said company, but also upon the value of the water belonging to said city, which was being taken and used by said company for the purpose of supplying the inhabitants of said city.

Twenty-fifth. Because the court decided that the complainant Los Angeles City Water Company had not waived the right and estopped itself to object to the reduction of water rates by said council of said city below those charged by the parties of the second part to said contract of date July 20, 1868, whereas the evidence showed such waiver and estoppel, as it appeared from the evidence that in each year ever since and including the year 1880 up to and including the year 1895 the council of said city, in obedience to the requirements of said article XIV of the constitution of said State and in pursuance of the act of the legislature of said State entitled "An act *th* enable the board of supervisors, town council, board of aldermen, or other legislative body of any city and county, city or town, to obtain data and information from any corporation, company, or person supplying water to such city and county, city or town, requiring such boards, town council, or other legislative body to perform the duties prescribed by section 1, of article XIV, of the constitution, and prescribing the penalties for the non-performance of such duties," approved March 7, 1881, had established water rates and compensation to be collected by any person or corporation supplying water to the inhabitants of said city, which rates and
275 compensation so fixed by said council were less than those alleged in the bill of complaint to have been charged by said parties of the second part to said contract at the time of the execution thereof, and that said complainant, Los Angeles City Water Company, did not at any time do any act or thing to prevent said council from so fixing said water rates and compensation, but always acquiesced in the action of said council in so fixing said water rates and compensation, and that during all of said time said company went on taking water from the Los Angeles river in excess of the quantity of ten inches mentioned in said contract, and collected

the water rates and compensation so fixed by said council and no others, and that by reason of such acquiescence and said action of said company it became and was estopped to question the right of said city and of its council after said year 1895 to fix and establish reasonable rates and compensation for water to be furnished to the inhabitants of said city by said company, and the claim of said complainants was at the time of filing their bill of complaint stale and not entitled to consideration by a court of equity; and that said company in each year from and including the year 1882 up to and including the year 1897, in pursuance of said act of March 7, 1881, furnished to said council of the city of Los Angeles a detailed statement showing the name of each water-rate payer, his or her place of residence, and the amount paid for water by each of said water-rates payers during the year preceding the date of such statement, and also showing the revenue derived from all sources and the expenditures made for supplying water during said time, thereby submitting said company to the jurisdiction of said council in regard to the fixing of water rates and compensation to be charged by said company and waiving any right which might have been conferred by said contract to object to said council exercising jurisdiction over said company with regard to the fixing of said water rates.

276 Twenty-sixth. Because the court decided that said contract of date July 20, 1868, so far as it provided that said mayor and common council of the city of Los Angeles should not reduce water rates below those charged by the parties of the second part to said contract at the time of the execution thereof was validated or confirmed by the act of the legislature of said State entitled "An act to ratify certain acts and ordinances of the mayor and common council of the city of Los Angeles," approved April 2, 1870, whereas said contract was not validated or confirmed by said act, as it appeared from the pleadings and the evidence that at the time of the passage and approval of said act said contract had been assigned to the complainant, Los Angeles City Water Company, and was then held by said company, and said act was therefore void as being in conflict with section 31 of article IV of the constitution of said State, in force at the time of the passage and approval of said act, providing that corporations should not be created by special act, and the effect of said act would have been to create a private corporation within the rule of decision of the supreme court of said State, and the evidence showed that at the time of the execution of said contract the parties of the second part thereto obtained the same for the benefit of themselves and certain associates with the intention of forming a water company under said act of April 22, 1858, for the purpose of carrying out said contract, and said Los Angeles City Water Company was accordingly formed by said parties of the second part and their said associates in the following month of August, 1868, and said company thereupon commenced the construction of the works required in and by said contract to be constructed, and did all of the acts and things which were ever done in performance of the obligations of said parties of the second part and their suc-

cessors by the terms of said contract, and said parties of the
276½ second part did nothing individually in performance of said contract, and said contract in truth and fact was obtained for said Los Angeles City Water Company, which was in contemplation of formation at the time of the execution of said contract, and there never was any intention on the part of said parties of the second part to individually carry out or perform any of the terms of said contract.

Twenty-seventh. Because the court decided that said contract of date July 20, 1868, did not come within the terms of said act of March 3, 1852, whereas said contract did come within the terms of said act, as it appears from the evidence that the parties of the second part to said contract obtained the same for the benefit of themselves and certain associates, with the intention of forming a water company under said act of April 22, 1858, and the other statutes of said State for the purpose of carrying out and performing the terms of said contract, and that said complainant, Los Angeles City Water Company, was accordingly formed by said parties of the second part and their said associates in the month of August, 1868, for the purpose of carrying out and performing the terms of said contract, and that said company upon its formation proceeded to construct and did construct the works required in said contract to be constructed by said parties of the second part and performed and did all the acts and things which were ever done in performance of the obligations of said parties of the second part and their successors, and that said parties of the second part individually did no act or thing in performance of said contract, and that said company ever since its incorporation has held said contract and said parties of the second part have no interest therein.

Twenty-eighth. Because the court decided that the complainants were entitled to relief herein, whereas complainants were not entitled to any relief herein, as it appears from the bill of complaint that the term of said contract of date July 20, 1868, would
277 have expired before any decree in said cause could have become final, and therefore said complainant, Los Angeles City Water Company, would not have been protected by any decree herein in collecting any higher water rates and compensation than those prescribed by said ordinance in said bill of complaint sought to be annulled to any greater extent than it would have been had this suit not been brought.

Twenty-ninth. Because the court decided that it had jurisdiction of this cause, whereas it had no such jurisdiction, as the only ground of such jurisdiction claimed in said bill of complaint is that the adoption of said ordinance sought in said bill to be annulled had the effect of impairing the obligation of said contract of date July 20, 1868, in so far as the same inhibited the mayor and common council of the city of Los Angeles from reducing water rates below those charged by the parties of the second part to said contract at the time of the execution thereof, and no act or thing had been done by the appellant The City of Los Angeles or by its council, or by any of its officers, agents, or employees, in enforcing the provisions

of said ordinance, nor had the property of the said Los Angeles City Water Company been interfered with in any wise by said city or by its council or by any of its officers, agents, or employees, and said company had received no damage in fact and was threatened with no damage, irreparable or otherwise, and no real controversy concerning the impairment by the State of California of the obligation of said contract had arisen between the complainants or any of them and the appellants herein or any of them, and this suit is not one arising under the Constitution of the United States, according to the true intent and meaning of an act of the Congress of the United States entitled "An act to determine the jurisdiction of the circuit courts of the United States, and to regulate the removal of causes from the State courts, and for other purposes," approved March 3, 1875, or any other act of the Congress of the United States conferring jurisdiction upon circuit courts of the United States.

278 Thirtieth. Because said decree adjudges that said contract of date July 20, 1868, in so far as it provides that the city should not reduce the water rates below those charged on the date of said contract, is valid, whereas said contract, in so far as said provision is concerned, is invalid.

Thirty-first. Because said decree adjudges that the ordinance sought in the bill of complaint to be annulled did reduce the water rates below those charged on the date of said contract, whereas said ordinance did not so reduce said water rates.

Thirty-second. Because said decree adjudges that the ordinance sought in said bill of complaint to be annulled impaired the obligation of said contract, whereas said ordinance did not impair the obligation of said contract.

Thirty-third. Because said decree adjudges the ordinance sought in said bill of complaint to be annulled to be null and void, whereas said ordinance was not null or void, but was valid in all respects.

Thirty-fourth. Because said decree adjudges that the ordinance sought in said bill of complaint to be annulled should be vacated and set aside and held for naught, whereas said decree should have adjudged that said ordinance was valid and binding on the complainants and each of them, and the bill of complaint does not pray that said ordinance be vacated or set aside or held for naught, and there is no allegation in the bill upon which to base such relief.

Thirty-fifth. Because said decree enjoins and restrains appellants herein during the existence of said contract from fixing water rates to be charged by the Los Angeles City Water Company at any less amount than those charged by J. S. Griffin, P. Beaudry, and Solomon Lazard at the time of the execution of said contract, whereas said decree should not have enjoined or restrained said appellants or any of them or the council of said city of Los Angeles

279 from fixing water rates to be charged by said Los Angeles City Water Company at a less amount than those charged by said Griffin, Beaudry, and Lazard at the time of the execution

of said contract, and said bill of complaint did not pray that such injunction or restraint should be decreed by said court during the existence of said contract, but only until the determination of said contract, and there was no allegation in said bill upon which to base said relief.

Wherefore said appellants pray that said decree be reversed, and that said circuit court be directed to enter a decree dismissing the complainants' bill of complaint.

LEE & SCOTT,
W. E. DUNN,
ALBERT CRUTCHER,
Solicitors for Appellants.

(Endorsed:) Eq. No. 734. U. S. circuit court, so. dist. of California. Los Angeles City Water Co. *et al. vs.* City of Los Angeles *et al.* Assignment of errors on appeal. Received copy of within assignment this 7th day of Sept'r, 1898. White & Monroe & J. S. Chapman, sol'rs for respondents. Filed Sep. 7, 1898. Wm. M. Van Dyke, clerk. W. E. Dunn, A. Crutcher, Lee & Scott, rooms 411–414 Bullard block, Los Angeles, California, solicitors for appellants.

280 At a stated term, to wit, the August term, A. D. 1898, of the circuit court of the United States of America of the ninth judicial circuit in and for the southern district of California, held at the court-room, in the city of Los Angeles, on Wednesday, the seventh day of September, in the year of our Lord one thousand eight hundred and ninety-eight.

Present: The Honorable Olin Wellborn, district judge.

Los Angeles City Water Company, Crystal Springs Land and Water Company, and S. G. Murphy, Complainants, *vs.* The City of Los Angeles, Herman Silver, Z. D. Matthuss, L. M. Grider, E. L. Blanchard, C. H. Toll, James Ashman, E. L. Hutchison, F. M. Nickell, and F. L. Baker, Composing the Council of the City of Los Angeles, Defendants.	No. 734.

On motion of J. R. Scott, Esq., of counsel for the defendants in said cause, it is ordered that the appeal of the said defendants from the order and decree made and entered on the 20th day of June, 1898, in the above-entitled cause to the Supreme Court of the United States be, and the same hereby is, allowed, and that a transcript of the record, pleadings, papers, and proceedings upon which said order and decree was made, duly authenticated, be sent to the said Supreme Court of the United States; it is further ordered that the

said appeal be, and the same hereby is, made returnable before the said Supreme Court of the United States on the 10th day of
281 October, 1898; it is further ordered that the bond on appeal, in the sum of five thousand (5,000.00) dollars, tendered by said defendants be, and the same hereby is, approved.

282 In the Circuit Court of the United States, Ninth Circuit, Southern District of California. In Equity.

LOS ANGELES CITY WATER COMPANY ET AL., Complainants,
vs.
CITY OF LOS ANGELES ET AL., Defendants. } No. 734.

Know all men by these presents that we, The City of Los Angeles, Herman Silver, Z. D. Matthuss, L. M. Grider, E. L. Blanchard, C. H. Toll, James Ashman, E. L. Hutchinson, F. M. Nickell, and F. L. Baker (composing the council of the city of Los Angeles), as principals, and Fidelity and Deposit Company of Maryland, as surety, are held and firmly bound unto the complainants, Los Angeles City Water Company, Crystal Springs Land and Water Company, and S. G. Murphy, in the full and just sum of five thousand dollars, to be paid to said complainants, their certain attorneys, executors, administrators, successors, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, successors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 7th day of September, in the year of our Lord one thousand eight hundred and ninety-eight.

Whereas lately at a circuit court of the United States for the southern district of California, in a suit depending in said court between Los Angeles City Water Company, Crystal Springs Land and Water Company, and S. G. Murphy, complainants, and The City of Los Angeles, Herman Silver, Z. D. Matthuss, L. M. Grider, E. L. Blanchard, C. H. Toll, James Ashman, E. L. Hutchinson, F. M. Nickell, and F. L. Baker, composing the council of the city
283 of Los Angeles, defendants, a decree was rendered against the defendants, and said defendants having obtained an appeal and filed a copy thereof in the clerk's office of said court to reverse the decree in the aforesaid suit, and a citation directed to said complainants, citing and admonishing them to be and appear at a session of the Supreme Court of the United States to be holden at the city of Washington on the 10th day of October next:

Now, therefore, the condition of the above obligation is such that if the said defendants shall prosecute said appeal to effect and answer all damages and costs if they fail to make said appeal good,

the above obligation to be void; else to remain in full force and virtue.

HERMAN SILVER. [SEAL.]
Z. D. MATHUSS. [SEAL.]
L. M. GRIDER. [SEAL.]
JAMES ASHMAN. [SEAL.]
CHAS. H. TOLL. [SEAL.]
EDWARD L. HUTCHISON. [SEAL.]
E. L. BLANCHARD. [SEAL.]
F. M. NICKELL. [SEAL.]
FRED L. BAKER. [SEAL.]
CITY OF LOS ANGELES, [SEAL.]
By M. P. SNYDER, *Mayor*. [SEAL.]

[Seal of Fidelity & Deposit Co.]

FIDELITY & DEPOSIT CO.
OF MARYLAND,
By E. G. MOSSIN,
A Member of the Local Board of Directors of said Company.

Attest: W. E. McVAY, *Agent*.

Sealed and delivered in the presence of—
——— ———.

[63 cents internal-revenue stamps.]

284 (Endorsed:) Eq. No. 734. Dept. Orig. U. S. circuit court, State, so. dist. of California. Los Angeles City Water Co. *et al. vs.* City of Los Angeles *et al.* Bond on appeal. Approved, Olin Wellborn, judge. Filed Sep. 7, 1898. Wm. M. Van Dyke, clerk. Lee & Scott, rooms 411–414 Bullard block, Los Angeles, California, solicitors for appellants.

285 In the Circuit Court of the United States of America of the Ninth Judicial Circuit in and for the Southern District of California.

LOS ANGELES CITY WATER COMPANY, CRYSTAL SPRINGS Land & Water Company, and S. G. Murphy, Complainants,
vs.
THE CITY OF LOS ANGELES, HERMAN SILVER, Z. D. Matthuss, L. M. Grider, E. L. Blanchard, C. H. Toll, James Ashman, E. L. Hutchison, F. M. Nickell, and F. L. Baker, Composing the Council of the City of Los Angeles, Defendants. } No. 734.

I, Wm. M. Van Dyke, clerk of the circuit court of the United States of America of the ninth judicial circuit in and for the southern district of California, do hereby certify the foregoing two hundred and eighty-four (284) typewritten pages, numbered from 1 to

284, inclusive, and comprised in one volume, to be a full, true, and correct copy of the record, pleadings, papers, opinion of the court, assignment of errors, and of all proceedings in the above and therein entitled cause, and that the same together constitute the transcript of the record on appeal to the Supreme Court of the United States in said cause.

I do further certify that the cost of the foregoing record is $185.45, and that the amount thereof has been paid me by The City of Los Angeles, one of the appellants in said cause.

In testimony whereof I have hereunto set my hand and affixed the seal of said circuit court of the United States of America of the ninth judicial circuit in and for the southern district of California, this 30th day of September, in the year of our Lord one thousand eight hundred and ninety-eight, and of the Independence of the United States the one hundred and twenty-third.

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Seal U. S. Circuit Court, Southern Dist. Cal., 1886.

WM. M. VAN DYKE,

Clerk of the Circuit Court of the United States of America of the Ninth Judicial Circuit in and for the Southern District of California.

[10 cent U. S. internal-revenue stamp, canceled Sep. 30, 1898. Wm. M. Van D.]

Endorsed on cover: Case No. 17,014. S. California C. C. U. S. Term No., 148. The City of Los Angeles, Herman Silver, Z. D. Matthuss, *et al.*, appellants, *vs.* Los Angeles City Water Co., Crystal Springs Land & Water Company, and S. G. Murphy. Filed October 10th, 1898.

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